

Proposals for a Commission to Address the Federal Government's Long-Term Fiscal Situation

December 14, 2009

Congressional Research Service

<https://crsreports.congress.gov>

R40986

Summary

In the 111th Congress, Members have introduced several proposals to establish a commission that would make potentially far-reaching recommendations on how to address the federal government's long-term fiscal situation. Generally speaking, the measures would include Members of Congress as some or most of a commission's membership, provide for a majority of commission members to be appointed by congressional leaders, have varying degrees of partisan balance in membership, and require supermajority votes of commission members to approve recommendations. Each of the bills also would provide special legislative procedures to encourage expedited consideration of a commission's recommendations.

This report provides a comparative analysis of four fiscal commission proposals introduced in the 111th Congress that would address some, or all, aspects of the federal government's long-term fiscal situation. The four proposals are S. 2853 (the "Bipartisan Task Force for Responsible Fiscal Action Act of 2009," sponsored by Senator Kent Conrad); S. 1056 (the "SAFE Commission Act," sponsored by Senator George Voinovich); H.R. 1557 (the "SAFE Commission Act," sponsored by Representative Jim Cooper); and S. 276 (the "Social Security and Medicare Solvency Commission Act," sponsored by Senator Dianne Feinstein). The report also discusses potential issues for Congress that may inform assessments whether the use of a commission, coupled with expedited consideration of a commission's proposals, may be appropriate for addressing the federal government's long-term fiscal situation; and, if a commission proposal were considered, how a commission proposal might be structured.

The report begins with brief summaries of the proposals. To provide context, the report next discusses legislative precursors to the proposals that are the subject of this report. Thereafter, the report includes analysis of potential issues for Congress, including a discussion of advantages and disadvantages of using a commission, potential implications of expedited legislative procedures, and matters related to the structure of proposed commissions.

Finally, **Appendix A** provides a more detailed side-by-side comparison of provisions of each bill. **Appendix B** discusses the long-term fiscal situation of the federal government and three major entitlement programs (Social Security, Medicare, and Medicaid). At the end of the report, a table provides a list of CRS subject matter experts who are available to answer questions from congressional clients related to many aspects of these legislative proposals.

Contents

Fiscal Commission Proposals.....	1
Recent History Related to Fiscal Commission Proposals	1
Procedural and Policy Choices	2
Congressional Consideration of Fiscal Commission Proposals.....	3
Brief Summaries of Current Fiscal Commission Proposals.....	4
S. 2853, Bipartisan Task Force for Responsible Fiscal Action Act of 2009	5
S. 1056, the Securing America’s Future Economy Commission Act	6
H.R. 1557, the Securing America’s Future Economy Commission Act	7
S. 276, Social Security and Medicare Solvency Commission Act.....	7
Precursors to Fiscal Commission Proposals.....	8
Base Realignment and Closure (BRAC) Commissions	9
CARFA and Related Proposals	11
Comparison Between Precursors and Fiscal Commission Proposals.....	13
Potential Issues for Congress.....	14
Advantages and Disadvantages of Commissions.....	14
Potential Advantages of Commissions.....	14
Potential Disadvantages of Commissions	17
Use of Expedited Procedures	18
Often-Cited Rationales for Expedited Procedures	19
Potential Impacts on Process and Power Relationships.....	19
Some Similarities and Differences.....	19
Commission Structure.....	20
Membership and Appointment Structure	20
Use of Members of Congress as Commission Members	21
Partisan Balance.....	22
Supermajority Procedures	22

Tables

Table A-1. Side-by-Side Comparison of Selected Provisions	24
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Appendixes

Appendix A. Side-by-Side Comparison of Proposals	24
Appendix B. Long-Term Fiscal Situation and Major Entitlements	34

Contacts

Author Information.....	40
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In the 111th Congress, Members have introduced several proposals to establish a commission that would make potentially far-reaching recommendations on how to address the federal government's long-term fiscal situation. The proposed commissions might as a group be called "fiscal commissions." Generally speaking, the measures would include Members of Congress as some or most of a commission's membership, provide for a majority of commission members to be appointed by congressional leaders, have varying degrees of partisan balance in membership, and require supermajority votes of commission members to approve recommendations. Each of the bills also would provide special legislative procedures to encourage expedited consideration of a commission's recommendations. This report provides an overview of four of these proposals—S. 2853, S. 1056, H.R. 1557, and S. 276 (listed in order of most recent introduction)—and discusses potential, related issues for Congress.¹ Potential issues for Congress include, among others, whether the use of a commission, coupled with expedited consideration of the commission's proposals, may be appropriate for addressing the federal government's long-term fiscal situation; and, if a commission proposal were considered, how a commission proposal might be structured.²

The report begins with recent history related to the legislative proposals and brief summaries of the four bills. Next, the report discusses legislative precursors that may help inform assessments of the proposals. Experience with these precursors, which include past commissions and proposals for commissions, appears to have informed how some of the current fiscal commission proposals were designed.

Analyses of potential issues for Congress follow thereafter, including discussion of some advantages and disadvantages of using a commission, potential implications of expedited legislative procedures, and matters related to the structure of proposed commissions. Finally, **Appendix A** provides a more detailed side-by-side comparison of provisions of each bill. **Appendix B** discusses the long-term fiscal situation and three major entitlement programs—Social Security, Medicare, and Medicaid—that are widely perceived as important for understanding the federal government's long-term fiscal situation. At the end of the report, a table provides a list of CRS subject matter experts who are available to answer questions from congressional clients related to many aspects of these legislative proposals.

Fiscal Commission Proposals

Recent History Related to Fiscal Commission Proposals

Observers have expressed concerns for decades about the long-term fiscal situation of the federal government.³ Amid debates over the direction of federal revenue and spending policies, they

¹ The report does not provide in-depth analysis of expedited procedures in each bill. Instead, the report highlights some features of each bill's special procedures (see side-by-side analysis in **Appendix A**) and discusses some related policy and procedural issues. Questions from congressional clients about specific expedited procedures and how they may operate might be directed to CRS subject matter experts listed in the report's table of "Key Policy Staff," which is located at the end of the report.

² For a general overview on the subject of commissions that advise Congress, see CRS Report R40076, *Congressional Commissions: Overview, Structure, and Legislative Considerations*, by Matthew Eric Glassman. In that report, "congressional commission" generally is defined as a multi-member independent entity that (1) is established by Congress, (2) exists temporarily, (3) serves in an advisory capacity, (4) is appointed in part or whole by Members of Congress, and (5) reports to Congress.

³ For discussion regarding enactment of Medicare and Medicaid and their forerunners in the late 1950s and 1960s in response to difficulties experienced by the elderly and poor in obtaining affordable health insurance, see CRS Report

focused on the overall balance between revenues and spending as well as on long-term trends for entitlement program spending. Congress routinely faces questions of when and how to address such concerns. In recent years, these concerns have been widespread and considerable. According to the Congressional Budget Office (CBO), “[u]nder current law, the federal budget is on an unsustainable path—meaning that federal debt will continue to grow much faster than the economy over the long run.”⁴

Procedural and Policy Choices

Shared perception of a problem does not necessarily generate consensus on what should be done to address the problem. Reaching agreement on changes to specific policies is difficult. In addition, policy makers often disagree about the process, sequence, and timing that should be used to make such decisions (e.g., using the regular legislative process or a commission). Matters of process, sequence, and timing are not necessarily neutral. A change of procedures in handling legislative proposals, or in changing the extent of discretion available to the President or agencies, may result in changes to power relationships and the ability to influence which policy choices are implemented.

When deciding when or how to address multi-dimensional policy challenges such as the federal government’s overall fiscal situation or the restructuring of multiple policies, programs, and agencies, Congress often considers a variety of procedural strategies. Most often, Congress has used the regular legislative process to address difficult problems like reducing the annual budget deficit or making complex organizational changes after a national emergency.⁵ The framers of the Constitution, however, established a relatively cautious system for enacting legislation.⁶ Perhaps as a consequence of the U.S. system of government, observers sometimes express frustration with perceptions of Congress and the President not addressing policy problems in a timely or sufficient way.

Less often, Congress has used alternative approaches. One of these alternatives has been to establish what might be called a “blue-ribbon” commission that reviews multiple agencies, operations, or policies. Such commissions may be used to help identify potential solutions for the federal government as a whole or for individual policy areas (e.g., military installations).⁷ At the same time, issues of representation may arise, raising questions of whether commission members

R40834, *The Market Structure of the Health Insurance Industry*, by D. Andrew Austin and Thomas L. Hungerford; and for information regarding Medicare cost growth, see U.S. Congress, Senate Committee on Finance, *Medicare and Medicaid: Problems, Issues, and Alternatives*, committee print, 91st Cong., 1st sess., February 9, 1970 (Washington: GPO, 1970), pp. 29-37.

⁴ U.S. Congressional Budget Office (hereafter CBO), *The Long-Term Budget Outlook*, June 2009, pp. XI-XII, at <http://www.cbo.gov/doc.cfm?index=10297>.

⁵ For examples, see CRS Report 98-721, *Introduction to the Federal Budget Process*, by Robert Keith; and CRS Report RL31493, *Homeland Security: Department Organization And Management—Legislative Phase*, by Harold C. Relyea.

⁶ In *Federalist* #73, Alexander Hamilton discussed how checks on the legislative process, including the veto, would “restrain the excess of lawmaking.” He argued “[t]he injury which may possibly be done by defeating a few good laws will be amply compensated by the advantage of preventing a number of bad ones.” See James Madison, Alexander Hamilton, and John Jay, “Federalist #73,” *The Federalist Papers* (New York: Penguin Press, 1987), p. 419. Also available at http://thomas.loc.gov/home/histdox/fed_73.html.

⁷ For federal government-wide examples, see discussion of the Hoover Commissions in CRS Report RL31446, *Reorganizing the Executive Branch in the 20th Century: Landmark Commissions*, by Ronald C. Moe. For an example related to a much narrower policy area (realignment and closure of military bases), see CRS Report 97-305, *Military Base Closures: A Historical Review from 1988 to 1995*, by David E. Lockwood and George H. Siehl.

will fairly represent all of the interests that should be considered. Much more rarely, Congress has provided for expedited legislative consideration of a commission's recommendations.

Congressional Consideration of Fiscal Commission Proposals

In recent Congresses, several legislative proposals have been introduced to establish a special commission whose recommendations could have the effect of addressing some, or all, aspects of the federal government's fiscal balance.⁸ The proposals have differed in significant ways. All of them, however, provided for a commission that would review multiple agencies and programs and, in some cases, revenue policies. Such a commission then would make recommendations for changes in government operations, policies, and structure. Some of the proposals would have required a commission's recommendations to be considered by Congress under expedited, or "fast-track," procedures,⁹ such as prohibitions of amendments.

In the 111th Congress, similar legislation has been discussed and introduced. This category of legislation includes a more specific group of measures that were referred to as "bipartisan process" proposals at a November 2009 Senate Budget Committee hearing.¹⁰ These measures also have been called "fiscal commission" and "deficit commission" proposals. Generally speaking, these proposals focus on addressing the federal government's long-term fiscal situation. The proposals call for some or most of a commission's membership to be Members of Congress, provide for a majority of commission members to be appointed by congressional leaders, have varying degrees of partisan balance in membership, and require supermajority votes of commission members to approve recommendations. Each bill also provides special legislative procedures to encourage expedited consideration of legislation (i.e., a commission's approved recommendations). The special procedures, among other things, would restrict the amendment process, limit floor consideration or debate, and, in some cases, require a supermajority for final chamber passage. The Senate Budget Committee hearing cited specific legislation in this category of commission-related proposals, including,

- from the 111th Congress, S. 1056/H.R. 1557, the Securing America's Future Economy Commission Act (SAFE Commission Act), which would establish the Securing America's Future Economy Commission (SAFE Commission);¹¹

⁸ Proposals were introduced both as stand-alone measures and components of budget process reform packages. For example, see CRS Report R40113, *Federal Budget Process Reform in the 111th Congress: A Brief Overview*, by Robert Keith; CRS Report RL34551, *A Federal Sunset Commission: Review of Proposals and Actions*, by Virginia A. McMurtry; and CRS Report RS21980, *Commission on the Accountability and Review of Federal Agencies (CARFA): A Brief Overview of Legislative Proposals*, by Clinton T. Brass.

⁹ For a general overview of the subject, see CRS Report RS20234, *Expedited or "Fast-Track" Legislative Procedures*, by Christopher M. Davis.

¹⁰ U.S. Congress, Senate Committee on the Budget, *Bipartisan Process Proposals for Long-Term Fiscal Stability*, hearing, 111th Cong., 1st sess., November 10, 2009. A video of the hearing and written statements are available at <http://budget.senate.gov/democratic/hearingstate.html>. Links to Chairman Kent Conrad's remarks and charts are available at links dated November 10, 2009, at <http://budget.senate.gov/democratic/>.

¹¹ S. 1056 was introduced on May 14, 2009. H.R. 1557 was introduced on March 17, 2009. The House and Senate versions differ in some respects, including provisions regarding commission membership, provision for alternative legislative proposals (in the House version), and expedited procedures. Previously, versions of the legislation were introduced by varying Members and were included in: H.R. 473, H.R. 3654, and S. 304 (110th Congress); and H.R. 5552 and S. 3491 (109th Congress). A hearing was held on H.R. 3654 (110th Congress) in 2008: U.S. Congress, House Committee on the Budget, *The SAFE Commission Act (H.R. 3654) and The Long-Term Fiscal Challenge*, hearing on H.R. 3654, 110th Cong., 2nd sess., June 24, 2008, H.Hrg. 110-36 (Washington: GPO, 2008).

- from the 111th Congress, S. 276, the Social Security and Medicare Solvency Commission Act (SSMSC Act), which would establish a National Commission on Entitlement Solvency (NCES);¹² and
- from the 110th Congress, S. 2063/H.R. 3655, the Bipartisan Task Force for Responsible Fiscal Action Act of 2007 (BTFRFA Act of 2007), which would have established a Bipartisan Task Force for Responsible Fiscal Action (BTFRFA), and which also became known as the “Conrad-Gregg proposal” after its original Senate sponsors.¹³

Senate Budget Committee Chairman Kent Conrad indicated at the November 2009 hearing that he and Ranking Member Judd Gregg soon would release a revised proposal. This measure, S. 2853, the Bipartisan Task Force for Responsible Fiscal Action Act of 2009 (BTFRFA Act of 2009), was introduced on December 9, 2009.

Member statements and press reports suggest that some Members are seeking a legislative vehicle by which such commission legislation could be enacted.¹⁴ After the new Conrad-Gregg proposal was announced, *CongressDaily* reported that Senator Conrad “and other Democrats are negotiating with Senate Democratic leaders to attach the bill to the legislation needed to increase the debt limit.”¹⁵ A recent *Wall Street Journal* article reported that the “White House was likely to make its own proposal for a panel, which could have less power than the proposed Conrad-Gregg commission.”¹⁶

Brief Summaries of Current Fiscal Commission Proposals

The following section includes brief summaries of the four fiscal commission bills that are the subject of this report. For more detail, see a side-by-side comparison of the legislation in **Appendix A**.

¹² S. 276 was introduced on January 16, 2009. Previously, versions of the legislation were introduced by varying Members and were included in S. 355/H.R. 3724 (110th Congress); and S. 3507 and S. 3521 (109th Congress).

¹³ S. 2063 (110th Congress) was introduced on September 18, 2007. H.R. 3665 (110th Congress) was introduced on September 25, 2007. A hearing was held on the Senate bill in 2007: U.S. Congress, Senate Committee on the Budget, *S. 2063, The Bipartisan Task Force for Responsible Fiscal Action Act of 2007*, hearing on S. 2063, 110th Cong., 1st sess., October 31, 2007, S.Hrg. 110-221 (Washington: GPO, 2007).

¹⁴ Office of Senator Evan Bayh, “Bayh Will Oppose More Borrowing Authority Unless Congress Agrees to New Debt-Fighting Plan,” press release, November 10, 2009, <http://bayh.senate.gov/news/press/release/?id=82016a9e-5cc7-494f-92fd-2f0e5d5792db>; Humberto Sanchez, “Debt Limit Legislation Seen as Vehicle for Commission,” *CongressDaily*, November 20, 2009, at http://www.nationaljournal.com/congressdaily/cda_20091120_2633.php; David Clarke, “Pressure to Address Budget Shortfalls Could Turn Into a Standoff in Senate,” *CQToday Online*, November 10, 2009, at <http://www.cq.com>; David Clarke, “Senators Tie Votes to Long-Term Budget Planning,” *CQToday*, November 10, 2009, p. 26.

¹⁵ CongressDaily PM, “Hill Briefs: Panel Unveils Deficit Commission Bill,” *CongressDaily*, December 9, 2009, at http://www.nationaljournal.com/congressdaily/print_friendly.php?PAGE=PM&DATE=2009-12-09. See also Jared Allen and Walter Alarkon, “Sens. Squeeze Speaker Over Commission,” *TheHill.com*, November 10, 2009, at <http://thehill.com/homenews/senate/67293-sens-squeeze-speaker-over-commission>. For more information about the federal government’s debt limit, see CRS Report RL31967, *The Debt Limit: History and Recent Increases*, by D. Andrew Austin and Mindy R. Levit.

¹⁶ Jonathan Weisman and John D. McKinnon, “White House Weighs New Panel to Tackle Deficit,” *Wall Street Journal*, November 25, 2009, p. A4.

S. 2853, Bipartisan Task Force for Responsible Fiscal Action Act of 2009

The Bipartisan Task Force for Responsible Fiscal Action (BTFRFA) Act of 2009¹⁷ would establish a temporary commission with 18 members.¹⁸ Of the 18 members, two would be appointed by the President (one of whom would be the Secretary of the Treasury), and 16 would be appointed by the House and Senate leadership from among Members of Congress. If S. 2853 were enacted, the sitting President were a Democrat, and both chambers of Congress were controlled by Democrats, 10 commission members would be appointed by Democrats (two by the President, four by the Speaker of the House, and four by the Senate majority leader) and eight would be appointed by Republicans (four each by the minority leader of the House and Senate). Sixteen of the commission members would be Members of Congress.¹⁹

The bill would direct the commission to review the “fiscal imbalance” of the federal government, identify factors that affect the long-term fiscal imbalance, analyze potential courses of action, and provide recommendations and legislative language to Congress.²⁰ The commission report would be voted on between November 3, 2010, and November 9, 2010; would need to be approved by 14 of the 18 commissioners; and could include minority opinions and additional views.²¹

S. 2853 would authorize a transfer of \$9 million from amounts appropriated or made available and remaining unobligated under Division A of the economic stimulus package that was enacted earlier in 2009.²² The bill would provide for a staff director,²³ the hiring of additional staff,²⁴ member travel reimbursements,²⁵ and contract authority.²⁶ The bill also would require the public announcement of meeting dates, times, and places;²⁷ authorize the commission to hold hearings;²⁸ and prohibit proxy voting.²⁹ The bill would provide for expedited consideration of the proposed legislation submitted by the commission, including a prohibition on amendments.³⁰ An affirmative vote of three-fifths of Members, duly chosen and sworn, would be necessary for final chamber passage.³¹

¹⁷ S. 2853 (111th Congress), introduced December 9, 2009. Section citations for this bill refer to Title III of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. § 601 *et seq.*), which would be amended to create the task force.

¹⁸ S. 2853, § 316(b)(4)(B).

¹⁹ S. 2853, § 316(b)(4)(B)(ii)-(v).

²⁰ S. 2853, § 316(b)(2).

²¹ S. 2853, § 316(b)(3)(B). The federal general election will take place on November 2, 2010.

²² S. 2853, § 3. The \$9 million could come from unobligated funds in Division A of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), but not from Title X of the division (“Military Construction and Veterans Affairs”).

²³ S. 2853, § 316(b)(4)(C)(ii).

²⁴ S. 2853, § 316(c).

²⁵ S. 2853, § 316(b)(4)(F).

²⁶ S. 2853, § 316(b)(5)(J).

²⁷ S. 2853, § 316(b)(5)(E)(ii)(I).

²⁸ S. 2853, § 316(b)(5)(E)(i).

²⁹ S. 2853, § 316(b)(5)(C)(i).

³⁰ S. 2853, § 316(e).

³¹ S. 2853, § 316(e)(2)(A)(vii) and § 316(e)(2)(B)(iv).

S. 1056, the Securing America's Future Economy Commission Act

The Securing America's Future Economy (SAFE) Commission Act³² would establish a temporary commission with 18 voting and two non-voting members.³³ Of the 18 voting members, two members would be appointed by the President, while 16 would be appointed by Members of Congress. If S. 1056 were enacted, the sitting President were a Democrat, and Democrats held the majority in both chambers, 10 commission members would be Democrats or would be appointed by Democrats (two presidential appointees, three members each appointed by the Speaker of the House of Representatives and Senate majority leader, and the chairs of the Senate Finance and House Ways and Means Committees), and eight would be Republicans or would be appointed by Republicans (three members each appointed by the Senate and House minority leaders and the ranking members of the Senate Finance and House Ways and Means Committees).³⁴ Twelve of the commission members would be Members of Congress.³⁵

The proposal would direct the commission to study and report to the President and Congress, findings, recommendations, and proposed legislative language to address four specific issues: (1) the balance between long-term spending commitments and revenues, (2) desire for increased net national savings, (3) the implications of foreign ownership of U.S. government debt, and (4) increased emphasis on long-term fiscal issues in the federal budget process.³⁶ In order to submit a legislative proposal to Congress, at least 13 members would need to vote in favor of doing so.³⁷

Unlike S. 2853 or S. 276, S. 1056 does not include language that would authorize funding for the commission. To fund the commission, an appropriation or transfer authority would be necessary.³⁸ The proposal would provide for a director of commission staff,³⁹ the hiring of additional staff,⁴⁰ travel reimbursement for certain members of the commission,⁴¹ and the use of contracts for services.⁴² The proposal also would require the commission to hold certain public hearings and give the commission the power to administer oaths to testifying witnesses.⁴³ The proposal would provide for expedited consideration of the proposed legislation submitted by the commission,

³² S. 1056 (111th Congress), introduced May 15, 2009.

³³ The non-voting members are the Comptroller General of the United States and the Director of CBO.

³⁴ This accounting assumes that S. 1056 contains a drafting error. The bill language provides twice for the chair of the House Committee on Ways and Means to be a member of the commission. Instead of conforming to the bill language, this report's accounting assumes one mention of the chair of House Ways and Means was intended to instead refer to the ranking member of the same committee.

³⁵ S. 1056, § 7(a)(2).

³⁶ S. 1056, § 3(a).

³⁷ S. 1056, § 6(a).

³⁸ Many bills creating advisory commissions contain language authorizing appropriations either by stating a specific figure or by authorizing "such sums as necessary." For an example of a commission example that was authorized "such sums as necessary," see the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism (P.L. 110-53, 121 Stat. 504, August 3, 2007). For an example of a commission authorized a specific sum, see the Commission on North American Energy Freedom (P.L. 109-58, 119 Stat. 1067, August 8, 2005). Legislation that authorized the 2005 BRAC round provided statutory authorization for transfer of already appropriated funds (P.L. 107-107; 115 Stat. 1344, December 28, 2001).

³⁹ S. 1056, § 8(a).

⁴⁰ S. 1056, § 8(b).

⁴¹ S. 1056, § 7(e)(1)-(2).

⁴² S. 1056, § 9(e).

⁴³ S. 1056, § 9(a).

including a prohibition on amendments. No special requirement is specified for final passage vote (e.g., supermajority voting requirement).⁴⁴

H.R. 1557, the Securing America's Future Economy Commission Act

The House version of the SAFE Commission Act, H.R. 1557, is substantially similar to the Senate version, S. 1056.⁴⁵ H.R. 1557, however, varies slightly in some respects. For example, H.R. 1557 would have 16 voting and two non-voting commission members. While the two non-voting members would be the same across both bills,⁴⁶ the total number of appointments made by Members of Congress would be fewer in the Senate version. If H.R. 1557 were enacted, the sitting President were a Democrat, and Democrats held the majority in both chambers, 10 commission members would be appointed by Democrats (two presidential appointees plus four members each appointed by the Speaker of the House of Representatives and Senate majority leader), and six would be appointed by Republicans (three members each appointed by the Senate and House minority leaders). Four of the commission members would be Members of Congress.⁴⁷

Like S. 1056, H.R. 1557 would direct the commission to study and report to the President and Congress, findings, recommendations, and proposed legislative language to address specific issues. H.R. 1557, however, provides for a different set of criteria than S. 1056. Under H.R. 1557, the commission report would address (1) the unsustainable imbalance between long-term federal spending commitments and projected revenue, (2) the increasing net national savings, (3) the implications of foreign ownership of U.S. government debt instruments, and (4) the improvement of the budget process to place a greater emphasis on long-term fiscal issues.⁴⁸ The commission, with at least a three-fourths vote, would also be required to submit a legislative proposal to Congress and the president within 60 days of the submission of the commission's report.⁴⁹ Amendments would be limited to the introduction of certain "alternatives" (see **Appendix A**), and no special requirement is specified for initial passage vote (e.g., supermajority voting requirement).

S. 276, Social Security and Medicare Solvency Commission Act

The Social Security and Medicare Solvency Commission (SSMSC) Act⁵⁰ would establish a permanent 15-member commission to study the solvency of Medicare and Social Security. Of the 15 members, the President would appoint seven, including three Democrats (in consultation with Democratic legislative leaders), three Republicans, and one person not affiliated with any political party. The remaining eight members of the commission would be appointed by the Democratic and Republican legislative leaders in the House and Senate (two appointees for each leader). Of the two appointments for each appointing official, one must be a Member of Congress who currently serves on the Senate Finance or House Ways and Means Committees.⁵¹ If congressional leaders appointed commission members of the same political party as each congressional leader, seven Democrats, seven Republicans, and one "unaffiliated" person would

⁴⁴ S. 1056, § 11.

⁴⁵ H.R. 1557 (111th Congress), introduced March 17, 2009.

⁴⁶ H.R. 1557, § 7(a)(2).

⁴⁷ H.R. 1557, § 7(b)(1).

⁴⁸ H.R. 1557, § 3(a).

⁴⁹ H.R. 1557, § 6(a).

⁵⁰ S. 276 (111th Congress), introduced January 16, 2009.

⁵¹ S. 276, § 4(a)(1).

be appointed, and at least four members of the commission would be Members of Congress. Commission members initially would serve six-year terms, and subsequent appointees would serve five-year terms.⁵²

The bill would require the commission to report not later than one year after the date of enactment and every five years thereafter to the President, Congress, the Commissioner of Social Security, and the Administrator of the Centers for Medicare and Medicaid Services.⁵³ The report would be required to include findings; recommendations resulting from the commission's review of analyses of the long-term actuarial financial condition of the Social Security and Medicare programs; identification of problems that threaten the programs solvency; analysis of potential solutions; and proposed legislative language to ensure the long-term solvency of the programs. For a finding, conclusion, or recommendation to be included in the report, at least 10 votes would be required.⁵⁴

The bill would provide for an executive director,⁵⁵ the hiring of additional staff,⁵⁶ travel reimbursement for members of the commission,⁵⁷ and the use of contracts for services.⁵⁸ The bill would require the commission to hold certain public hearings,⁵⁹ and authorize "such sums as necessary" to fund the commission.⁶⁰ It also would create special procedures for the consideration of legislation submitted by the commission, including a limitation to only amendments that are "relevant" to the commission's provisions and a time limit for floor consideration.⁶¹ A vote of three-fifths of Members, duly chosen and sworn, would be necessary to proceed to a vote on initial passage.⁶²

Precursors to Fiscal Commission Proposals

In the past, Congress has sometimes chosen to establish advisory commissions to study policy problems and report back with advice and legislative recommendations. Over 80 such congressional advisory commissions have been established in the past 20 years.⁶³ In the realm of commissions that focus on reviewing and restructuring multiple agencies and policies, some previous commissions (and proposals to establish commissions) appear to have informed how some of the fiscal commission proposals that are the subject of this report were designed.

The following sections discuss past commissions and proposals that may have informed the design of fiscal commissions that are the subject of this report. Where commissions are perceived to have succeeded (i.e., accomplished desired goals), Congress might explore the extent to which the reasons for that success could apply to the creation of a commission addressing the federal

⁵² S. 276, § 4(a)(4).

⁵³ S. 276, § 3(c)(2)(A)(i).

⁵⁴ S. 276, § 3(c)(2)(B).

⁵⁵ S. 276, § 8(a).

⁵⁶ S. 276, § 8(b).

⁵⁷ S. 276, § 5(b).

⁵⁸ S. 276, § 5(d)(3).

⁵⁹ S. 276, § 5(a)(2).

⁶⁰ S. 276, § 6.

⁶¹ S. 276, § 7.

⁶² S. 276, § 7(b)(2)(C)(ii) and § 7(b)(3)(C)(ii).

⁶³ For an overview and listing of these commissions, see CRS Report R40076, *Congressional Commissions: Overview, Structure, and Legislative Considerations*, by Matthew Eric Glassman.

government's long-term fiscal situation. Where such commissions or proposals are perceived to have failed, Congress might consider whether there are "lessons learned" that might be applied.

In addition, perspectives on the long-term fiscal situation and three major entitlement programs—Social Security, Medicare, and Medicaid—and previous efforts to address entitlement-related issues through commissions may help inform assessments of fiscal commission proposals. The long-term fiscal situation and major entitlement programs are discussed in **Appendix B**.

Base Realignment and Closure (BRAC) Commissions

A summary of legislative precursors to the commission proposals that are the subject of this report arguably would begin with congressional efforts to reduce the scale and number of U.S. military installations. These efforts resulted in the establishment of commissions to review a relatively narrow area of public policy, compared to the commission proposals examined elsewhere in this report. Base Realignment and Closure (BRAC) commissions have been cited favorably by multiple proponents of the current proposals as a procedural model for accomplishing their desired policy objectives.⁶⁴

In the wake of reduced east-west tensions, the collapse of the Warsaw Pact military threat, and the Soviet Union's breakup from the late 1980s until 1991, most analysts agreed that the Department of Defense's (DOD's) base structure was larger than necessary to meet the department's needs.⁶⁵ Nevertheless, there were differences concerning which, if any, additional bases should be closed, at what speed, and what criteria should be used for making those decisions. Significantly, the impact of a specific base closing would be keenly felt in one Member of Congress's state or district, but benefits in terms of savings could be spread widely among all citizens and taxpayers. In combination, these two factors—(1) the narrowly felt pain from an individual base closing and (2) the widely diffused benefits from closing many bases to save taxpayer funds—produced strong incentives for coalitions of Members of Congress to bargain in the legislative process to protect many bases from closure.⁶⁶

At the same time, there were widespread concerns that, absent restrictions and safeguards, DOD might close, or not close, bases for political reasons. In the past, high-level representatives of DOD, in soliciting congressional support for favored programs, reportedly might have implied that if a Member of Congress voted against the program, a base might be closed in the Member's district. For example, former Representative and House Majority Leader Richard K. Arney said,

⁶⁴ U.S. Congress, Senate Committee on the Budget, *Bipartisan Process Proposals for Long-Term Fiscal Stability*, hearing, 111th Cong., 1st sess., November 10, 2009.

⁶⁵ This section draws on CRS Report 97-305, *Military Base Closures: A Historical Review from 1988 to 1995*, by David E. Lockwood and George H. Siehl (to which Clinton T. Brass contributed).

⁶⁶ According to public choice theory, such a phenomenon may either improve or degrade societal welfare depending on the specifics of the situation, including how strongly different individuals value certain outcomes, the distribution of such configurations of values, and how value is to be measured. For example, if 51 out of 100 legislative districts would benefit slightly from a change in policy by an amount of \$1 each, the total benefits of the policy change to them would be \$51. But if the cost of the policy change to the remaining 49 legislative districts were \$10 each, the total costs to this minority would be \$490. In a stand-alone vote with no vote-trading ("log-rolling") in other policy areas, the policy change might be made by a vote of 51-49, but at a net cost to society rather than a net benefit (\$51 in benefits minus \$490 in costs equals a net cost to society of \$439). For more extensive discussion of log-rolling in the context of a commission's recommendations being subject to expedited procedures, see CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass.

[t]he fact is, unfortunate as it is, that historically base closings have been used as a point of leverage by administrations, Republican and Democratic administrations, as political leverage over and above Members of Congress to encourage them to vote in a manner that the administration would like.⁶⁷

During the late 1980s, several bills were introduced in Congress to relax statutory restrictions that made closing a base difficult. The first enacted proposal was an elaborate framework prescribed by the Defense Authorization Amendments and Base Closure and Realignment Act (1988).⁶⁸ The procedure established under that statute—relying on the services of a commission to draw up the Secretary of Defense’s recommendations and a fast-track, no-amendment vote—proved so effective that a later statute, the Defense Base Closure and Realignment Act of 1990,⁶⁹ created three subsequent Defense Base Closure and Realignment (BRAC) Commissions that operated in 1991, 1993, and 1995.⁷⁰

This occurred notwithstanding arguments against the legislation on grounds that bases were closed without the legislation, and that the legislation was an abdication of congressional responsibilities to the executive branch. That said, the statute vested considerable power in both executive and legislative branches in the creation of the commission, and transferred that control to the commission itself once it was established.

While the law gave the President the authority to appoint commissioners, it also stated that he “should” consult with the majority and minority leadership in both chambers in appointment of six of its nine members, and all commissioners were subject to the general “advice and consent of the Senate” requirement on all senior political appointees.⁷¹ The statute also spelled out the criteria under which installations were to be evaluated for realignment or closure, and both DOD and the commission were required to adhere to them in crafting their recommendations. The process required the Secretary of Defense to submit his recommendations to the commission by a date certain. The commission was then to review, accept, amend, or reject each of those recommendations and could create recommendations of its own, again by a date certain. The President was authorized only to accept the commission’s entire list or return it one time to the commission for reconsideration, stating the basis of his concerns, and the statute placed a deadline on that approval.⁷² Upon the commission’s resubmittal, the President could reject outright or approve the entire list. Unless Congress passed a joint resolution of disapproval within 45 days of the President’s approval, the statute required the Secretary of Defense to implement all approved recommendations by a date certain—six years from the date of presidential approval.⁷³

⁶⁷ Rep. Richard K. Armey, remarks in the House, *Congressional Record*, vol. 134, July 7, 1988, p. 17072.

⁶⁸ P.L. 100-526; 102 Stat. 2623, at 2627.

⁶⁹ Title XXIX of P.L. 101-510; 104 Stat. 1485, at 1808.

⁷⁰ The commissions colloquially became known as “BRAC commissions,” using the acronym from the 1988 process. The statute included a sunset clause. BRAC authorization expired on December 31, 1995.

⁷¹ For the 2005 BRAC Commission, only the chairman, Anthony J. Principi, was confirmed by the Senate. Action on the remaining eight commissioners was blocked by then-Senator Trent Lott. President George W. Bush eventually gave the other commissioners recess appointments that extended past the statutory termination of the 2005 BRAC Commission’s authorization.

⁷² If any of these deadlines were not met, the statute required that the BRAC process cease.

⁷³ A particular point of contention among opponents to the BRAC process is the difficulty of invoking judicial review of closure decisions. This was brought to prominence during the 1991 BRAC round, when the President approved the closure of the Philadelphia Naval Shipyard (PNSY). On March 2, 1994, Senator Arlen Specter, of Pennsylvania, argued before the U.S. Supreme Court that DOD had not supplied all required information to the commission, the GAO, and Congress. The Court ruled that judicial review of BRAC recommendations was not available to the litigants because the department and commission recommendations did constitute a reviewable “final agency action.” The Court held

In mid-1997, Secretary of Defense William Cohen called for two new rounds of base closures and realignments.⁷⁴ He explained that, while four previous rounds had achieved significant savings, it was important to continue the process of closing underutilized facilities. Despite DOD pressure, most Members of Congress were reluctant to support authorization of new base closure legislation, at least for the foreseeable future.⁷⁵

A single additional round of base closures was authorized in 2001, to be implemented in 2005 under somewhat different procedures.⁷⁶ This new authorization retained the basic form, structure, and process of the previous three rounds, but amendments to the governing statute included, among other provisions, an increase in the number of commissioners from eight to nine (to minimize the likelihood of tie votes on individual recommendations) and the requirement for a supermajority of votes in favor of an installation closure.

In addition to providing for a commission and expedited procedures, the BRAC statute required extensive actions to ensure that recommendations were impartial, as objective as possible, and based on expert analysis. It required that the Secretary of Defense turn over documentation used in the drafting of his recommendation list to the commission for its review. It provided for the commission to be supported by a staff of experts, and it also required that the commission's documentation be open for public review.⁷⁷

CARFA and Related Proposals

Legislation that was first introduced in the 107th Congress by Senator Sam Brownback and Representative Todd Tiahrt also might be viewed as a precursor to the commission bills that are the subject of this report. Generally, the proposals would have established a commission to review multiple agencies and programs, required the commission to make recommendations, and required that the recommendations (in the form of draft legislation) be considered by Congress under expedited procedures. Variations on the bills, with somewhat different scopes and provisions, have been introduced or proposed in subsequent Congresses. They appeared as stand-alone bills, components of budget process reform legislation, and presidential proposals.⁷⁸

that the President's approval of those lists as being directly responsible for the shuttering of PNSY and that courts had no authority to review his actions in this case. See Ron Hess et al., *The Closing and Reuse of the Philadelphia Naval Shipyard*, National Defense Research Institute (RAND), MR1364 (Santa Monica, CA: 2001), pp. 17-18. Lower courts used similar arguments during the 2005 BRAC round to dismiss a number of suits brought by state governors to prevent the transfers of various Air National Guard aircraft.

⁷⁴ This paragraph draws from CRS Report RL30051, *Military Base Closures: Agreement on a 2005 Round*, by David E. Lockwood.

⁷⁵ The reasons that were given included, among others, grass-roots opposition from communities likely to be affected, questions about DOD estimates of actual savings, and questions about the validity of DOD's major premise that there should be a one-to-one correlation between the percentage of reduction in end-strength and in base closings. Of the two chambers, the House of Representatives expressed the stronger and more united opposition. In the Senate, proponents of new base closure rounds attempted to attach amendments to each year's defense authorization bill from 1997 to 2001, achieving success only toward the end of 2001.

⁷⁶ Title XXX of P.L. 107-107; 115 Stat. 1342. For discussion, see CRS Report RL30051, *Military Base Closures: Agreement on a 2005 Round*, by David E. Lockwood.

⁷⁷ The 2005 BRAC Commission created an electronic library of all its documentation, including records submitted to it by the Secretary of Defense, its own correspondence, notes, and memoranda, and all of the documentation submitted to it by outside sources. At the conclusion of its work, the Commission staff also digitized the archived documentation from the 1995 BRAC Commission. These documents may be browsed or searched in the eLibrary at the 2005 BRAC Commission's website: <http://www.brac.gov>.

⁷⁸ For analysis of the bills through the 109th Congress, see CRS Report RL32726, *Proposals for a Commission on the*

In 2002, Senator Brownback and Representative Tiahrt introduced companion bills to establish a Commission on the Accountability and Review of Federal Agencies (CARFA; S. 2488/H.R. 5090). The legislation would have established a commission of presidentially appointed members. In turn, the commission would have been required to review all executive agencies and programs, except for DOD, and make recommendations for the realignment or elimination of agencies and programs according to some general criteria. The commission's recommendations, in the form of draft legislation, then would have been subject to expedited procedures in Congress. The sponsors compared the legislation with the BRAC process. Neither bill received further action in the 107th Congress, but versions of the legislation attracted considerably more attention in the next two Congresses.⁷⁹ Proponents of different versions of CARFA often compared the proposals to the BRAC commissions, except that the proposed CARFA legislation would have focused on most or all agencies and programs of the executive branch of government. Proponents also argued that the mechanism would eliminate ineffective programs.⁸⁰ Critics of CARFA and related legislation argued the proposals would constitute abdication of congressional responsibilities, including the ability to amend legislative proposals, and transfer power to the President by delegating congressional responsibilities to presidential appointees or to appointees primarily chosen by members of the political party of a sitting President.⁸¹

A hearing was held on a Senate version of the legislation in the 108th Congress (S. 1668).⁸² In the 109th Congress, House leadership reportedly sought to move H.R. 5766 to a floor vote.⁸³ Floor action was postponed indefinitely, however, reportedly in the face of opposition from Democrats, Republican moderates, and some Republican appropriators.⁸⁴ Separately, Senator Judd Gregg, then chairman of the Senate Budget Committee, sponsored S. 3521 (109th Congress), which included CARFA-like provisions as part of a broader budget reform package. The bill was

Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress, by Clinton T. Brass, and CRS Report RS21980, *Commission on the Accountability and Review of Federal Agencies (CARFA): A Brief Overview of Legislative Proposals*, by Clinton T. Brass. The bills included (identical or closely related bills separated by a forward-slash): S. 2488/H.R. 5090 (107th Congress); S. 837, S. 1668/H.R. 3213, S. 2752/H.R. 3800, H.R. 3925 (108th Congress); H.R. 2290, H.R. 2470/S. 1155, S. 1928, S. 3521, and somewhat-related H.R. 3276/S. 1399 (Administration-proposed "results commissions") and H.R. 5766 ("federal review commissions") (109th Congress); S. 15, H.R. 2416, S. 1935, S. 2518, and somewhat-related H.R. 7071 ("federal agency program realignment and closure commission") (110th Congress); and H.R. 1802, S. 1282, and H.R. 3964 (111th Congress).

⁷⁹ The proposals were distinct from separately considered "sunset commission" legislation, which generally provide for programs and agencies to terminate automatically on a predetermined schedule, after a commission's review, unless explicitly renewed by law. CRS Report RL33569, *Sunset and Program Review Commission Bills in the 109th Congress: Comparing H.R. 3282 and H.R. 5766*, by Virginia A. McMurtry; and CRS Report RL34551, *A Federal Sunset Commission: Review of Proposals and Actions*, by Virginia A. McMurtry.

⁸⁰ CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass.

⁸¹ CRS Report RS21980, *Commission on the Accountability and Review of Federal Agencies (CARFA): A Brief Overview of Legislative Proposals*, by Clinton T. Brass; and U.S. Congress, House Committee on Science, "Boehlert Testifies Before Rules Committee on 'Misguided' Sunset Bill," press release, no date [July 27, 2006] (printed on July 27, 2006, from <http://www.house.gov/science/press/109/109-303.htm>, but no longer online; available from first-listed author to congressional clients upon request).

⁸² CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass.

⁸³ CRS Report RS21980, *Commission on the Accountability and Review of Federal Agencies (CARFA): A Brief Overview of Legislative Proposals*, by Clinton T. Brass; and CRS Report RL34551, *A Federal Sunset Commission: Review of Proposals and Actions*, by Virginia A. McMurtry.

⁸⁴ For discussion, see CRS Report RS21980, *Commission on the Accountability and Review of Federal Agencies (CARFA): A Brief Overview of Legislative Proposals*, by Clinton T. Brass; and Steven T. Dennis, "Sun May be Setting on Tiahrt and Brady Sunset Bills," *CQToday*, July 27, 2006, at <http://www.cq.com>.

reported with an amendment in the nature of a substitute.⁸⁵ The report argued in support of the provisions, saying that “[p]rudent stewardship of the public’s funds requires that Congress make every effort to ferret out wasteful spending and identify redundant activity.”⁸⁶ During committee markup, then-Ranking Member Kent Conrad proposed amending S. 3521 to strike the CARFA commission language and “[replace] it with the bipartisan membership of the Congressional committees of jurisdiction so that they can do their job,” instead of “outsourcing responsibility for our nation’s fiscal condition to largely unelected, unaccountable commission members.”⁸⁷ The amendment was defeated. After being reported, the bill received no further action.

Notably, S. 3521 also included provisions that would have established a National Commission on Entitlement Solvency.⁸⁸ The latter provisions were similar in some respects to the provisions that were included in S. 2063 of the 110th Congress, a predecessor to S. 2853 (111th Congress, one of the measures that is the subject of this report), and S. 276 (111th Congress, another of the measures that is the subject of this report). Significant differences between the entitlement commission provisions in S. 3521 (109th Congress) and “task force” provisions of S. 2063 (110th Congress) and S. 2853 (111th Congress) included the “task force” measures’ requirements that most commission members be Members of Congress and that a larger supermajority be necessary to report and submit recommendations for legislative consideration.

Comparison Between Precursors and Fiscal Commission Proposals

The federal government’s experience with BRAC commissions appears to have informed development of the various fiscal commission proposals.⁸⁹ Each bill provides special legislative procedures to encourage expedited consideration of legislation (i.e., a commission’s approved recommendations). The special procedures would, among other things, restrict the amendment process and limit floor consideration or debate. A major difference between BRAC and the fiscal commission proposals, however, is the comparative breadth of the fiscal commissions’ intended scopes. Most of the fiscal commission proposals include within the commission’s scope all policies that may relate to the federal fiscal balance. As such, it is not clear what policy domains, if any, might fall outside a commission’s scope, when drafting legislation for commission approval. In view of the potentially far-reaching scope of a commission’s recommendations, some of the fiscal commission proposals’ requirements for a supermajority approval by commission members and, if a commission’s recommendations were considered by Congress, supermajority vote by each chamber of Congress for initial or final chamber passage, might be viewed as controls intended to channel recommendations toward a broader consensus package.

⁸⁵ U.S. Congress, Senate Committee on the Budget, *The Stop Over Spending Act of 2006*, report to accompany S. 3521, 109th Cong., 2nd sess., July 14, 2006, S.Rept. 109-283 (Washington: GPO, 2006).

⁸⁶ *Ibid.*, p. 25.

⁸⁷ Senate Committee on the Budget, Democratic Staff, “‘Do Your Job’ Amendment Directs Congress To Do Its Job,” June 20, 2006, at http://budget.senate.gov/democratic/press/2006/summary_2006doyourjobamendment062006.pdf. The reported bill provided for 12 of 15 commission members to be appointed by congressional leaders, but did not direct who may be appointed.

⁸⁸ S. 3521, as reported (109th Congress), Title IV, Subtitle A. A stand-alone version of the bill was introduced as S. 3507 (109th Congress).

⁸⁹ At the November 10, 2009, hearing of the Senate Budget Committee on fiscal commission proposals, sponsors of each fiscal commission bill spoke favorably of the BRAC process as an example of a special process that they viewed as necessary for success in addressing the federal government’s fiscal situation, in contrast with the regular legislative process. See oral and written testimony in U.S. Congress, Senate Committee on the Budget, *Bipartisan Process Proposals for Long-Term Fiscal Stability*, hearing, 111th Cong., 1st sess., November 10, 2009.

In contrast with BRAC legislation, the various CARFA proposals and related measures were not enacted. Like the fiscal commission proposals that are the subject of this report, the CARFA proposals generally provided for far-reaching scopes, across multiple agencies and programs. The process-related provisions of the CARFA proposals, however, seemed to garner substantial opposition. Some of the criticisms that opponents consistently raised against these proposals were arguments that appointments of commission members would have been substantially subject to the control of the President or to members of one political party. If such arguments were considered to be valid, a combination of the appointment provisions with other process-related provisions, such as simple majority voting by commission members and expedited legislative consideration by Congress, arguably might have had substantial effects on power relationships if the legislation had been enacted. In this light, one of the major differences between the fiscal commission proposals and the CARFA proposals is a movement toward appointment of Members of Congress as commission members, thereby potentially reducing the influence of the President.

Another difference is the use of supermajority voting requirements for the commission's recommendations and also for congressional consideration of the commission's recommendations. The supermajority requirements probably would make it necessary to achieve broader compromise, in order to approve recommendations. As with the CARFA proposals, however, it could be argued that special legislative procedures prohibiting amendments and limiting debate might affect power relationships within Congress. In addition, in comparison with use of the regular legislative process, the use of a commission—even one composed primarily of Members—might raise questions whether commission members would be in a position to represent all of the interests that could be considered in the regular legislative process.

Potential Issues for Congress

Decisions about whether to establish and how to structure a commission may have impacts on both policy outcomes and the public choice process in Congress.⁹⁰ The following section surveys three general issues that arise from the proposed fiscal commission legislation. First, what are the strengths and weaknesses of using a commission to address long-term fiscal issues, as opposed to the regular legislative process and the existing legislative committee system? Second, what are some implications of using fast-track procedures in conjunction with commission recommendations? Finally, what issues arise from the structural design of the commissions themselves?

Advantages and Disadvantages of Commissions

Potential Advantages of Commissions

Throughout American history, Congress has occasionally found congressional advisory commissions to be useful tools in the legislative process.⁹¹ Commissions may be established,

⁹⁰ See CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass; Peri E. Arnold, *Making the Managerial Presidency: Comprehensive Reorganization Planning, 1905-1996*, 2nd ed. (Lawrence, KS: University Press of Kansas, 1998), pp. 126-134; CRS Report R40076, *Congressional Commissions: Overview, Structure, and Legislative Considerations*, by Matthew Eric Glassman; and CRS Report R40520, *Federal Advisory Committees: An Overview*, by Wendy R. Ginsberg.

⁹¹ Advisory commissions and committees also may be established by the President or an agency head. Multi-headed bodies in the executive branch that perform executive functions are not included in the scope of this discussion.

among other things, to cope with increases in the scope and complexity of legislation, to forge consensus, to draft bills, to promote inter-party communication, to address issues that do not fall neatly within the jurisdictional boundaries of congressional committees, and to bring together recommendations.⁹² These potential advantages may be grouped into five categories: expertise, issue and political complexity, consensus building and reducing partisanship, solving collective action problems, and visibility.

Obtaining Expertise

Congress may choose to establish a commission when legislators and their staffs do not currently have sufficient knowledge or expertise in a complex policy area.⁹³ By assembling experts with backgrounds in particular policy areas to focus on a specific mission, legislators can efficiently obtain insight into complex public policy problems.⁹⁴

Overcoming Issue or Political Complexity

Complex policy issues may cause time management challenges for Congress. Legislators often keep busy schedules and may not have time to deal with intricate or technical policy problems, particularly if the issues require consistent attention over a period of time.⁹⁵ A commission can devote itself to a particular issue full-time, and can focus on an individual problem without distraction.⁹⁶

Complex policy issues may also create institutional problems, because they do not fall neatly within the jurisdiction of any particular committee in Congress.⁹⁷ By virtue of their ad hoc status, commissions may be able to circumvent such issues. Similarly, a commission may allow particular legislation or policy solutions to bypass the traditional development process in Congress, potentially avoiding some of the impediments inherent in a decentralized legislature.⁹⁸

Consensus Building and Reducing Partisanship

Legislators seeking policy changes may be confronted by an array of interests, some in favor of proposed changes and some opposed. When these interests clash, it may become more challenging to reach consensus in the highly structured political institution of the modern

⁹² Colton Campbell, "Creating an Angel: Congressional Delegation to Ad Hoc Commissions," *Congress and the Presidency*, vol. 25, no. 2 (Autumn 1998), p. 162.

⁹³ Ibid., p. 174. See also Robert L. Chartrand, Jane Bortnick, and James R. Price, *Legislator as User of Information* (Washington: Congressional Research Service, 1987), pp. 11-15.

⁹⁴ Colton Campbell, *Discharging Congress: Government by Commission* (Westport, CT: Praeger, 2002), p. 51.

⁹⁵ Ibid., pp. 55-59.

⁹⁶ Morris P. Fiorina, "Group Concentration and the Delegation of Legislative Authority," in Roger G. Noll, ed., *Regulatory Policy and the Social Sciences* (Berkeley: University of California Press, 1985), p. 184. See also James E. Katz, "Science, Technology, and Congress," *Science*, vol. 30, no. 4 (May 1993), pp. 41-44.

⁹⁷ George T. Sulzner, "The Policy Process and the uses of National Governmental Study Commissions," *Western Political Quarterly*, vol. 24, no. 3 (Sep. 1971), pp. 438-448.

⁹⁸ Kenneth R. Mayer, "Closing Military Bases (Finally): Solving Collective Dilemmas Through Delegation," *Legislative Studies Quarterly*, vol. 20, no. 3 (Aug. 1995), pp. 395-397. However, some observers might argue that a commission's potential ability to circumvent such issues may be a disadvantage, if shared committee jurisdictions reflect highly complex interrelationships that are not easily overcome, and that committees are capable of working together cooperatively without engaging in "turf" disputes.

Congress.⁹⁹ By creating a commission, Congress may be able to place policy debates in a more flexible environment, where congressional and public attention can be developed over time.¹⁰⁰

Solutions to policy problems produced within the normal legislative process may be subject to charges of partisanship.¹⁰¹ Similar charges may be made against investigations conducted by Congress.¹⁰² Commissions are not necessarily immune from such criticisms. However, the potential for a congressional advisory commission to take on a nonpartisan or bipartisan character may make its findings and recommendations less susceptible to such charges and more politically acceptable to diverse viewpoints. A perception of bipartisanship or nonpartisanship may give a commission's recommendations some credibility, both in Congress and among the public, even when dealing with divisive issues of public policy.¹⁰³ Commissions may also give factions space to negotiate compromises in good faith, bypassing maneuvers that may accompany more public negotiations.¹⁰⁴ Similarly, because commission members typically are not elected officials, in some circumstances they may be suited to suggesting unpopular policy solutions.¹⁰⁵

Addressing Collective Action Problems

A commission may allow legislators to address collective action problems, situations in which some legislators individually seek to protect the interests of their own district, despite widespread agreement that the collective result of such interests is something none may prefer. Legislators can use a commission to jointly "tie their hands" in such circumstances, allowing general consensus about a particular policy solution to avoid being impeded by individual concerns about the effect or implementation of the solution.¹⁰⁶ The BRAC commissions typically are cited as examples of politically and geographically neutral bodies that made independent decisions about closures of military bases.¹⁰⁷ The list of bases slated for closure by the commission was required to be either accepted or rejected as a whole by Congress, bypassing the potential for amendments to prevent individual bases from being closed, and potentially protecting individual Members from charges that they didn't "save" their district's base.¹⁰⁸ Nonetheless, such "protection" did not necessarily prevent such charges from being made.

Raising Visibility

By establishing a commission, Congress can often provide a highly visible forum for important issues that might otherwise receive less attention from the public.¹⁰⁹ Commissions often are

⁹⁹ Campbell, *Discharging Congress*, p. 12.

¹⁰⁰ Ibid, p. 13; Newt Gingrich, "Leadership Task Forces: The 'Third Wave' Way to Consider Legislation," *Roll Call*, Nov. 16, 1995, p. 5.

¹⁰¹ Campbell, *Discharging Congress*, p. 10.

¹⁰² Ibid., p. 9.

¹⁰³ George T. Sulzner, "The Policy Process and the uses of National Governmental Study Commissions," pp. 443-445.

¹⁰⁴ John B. Gilmour, "Summits and Stalemates: Bipartisan Negotiations in the Postreform Era," in Roger H. Davidson, ed., *The Postreform Congress* (New York: St. Martin's Press, 1993), pp. 247-248.

¹⁰⁵ Daniel Bell, "Government by Commission," *Public Interest*, no. 3 (Spring 1966), p. 7; Campbell, *Discharging Congress*, p. 70.

¹⁰⁶ Gary W. Cox and Matthew D. McCubbins, *Legislative Leviathan: Party Government in the House* (Berkeley: University of California Press, 1993), p. 80.

¹⁰⁷ Mayer, "Closing Military Bases Bases (Finally): Solving Collective Dilemmas Through Delegation," pp. 398-399.

¹⁰⁸ Charles E. Cook, "Base Closing Furor: Minimal Political Impact for Members," *Roll Call*, Mar. 18, 1993, p. 1.

¹⁰⁹ David S. Brown, "The Public Advisory Board as an Instrument of Government," *Public Administration Review*, vol.

composed of notable public figures, allowing personal prestige to be transferred to policy solutions.¹¹⁰ Meetings and press releases from a commission may receive significantly more attention in the media than corresponding information coming directly from members of congressional committees. Upon completion of a commission's work product, public attention may be temporarily focused on a topic that otherwise would receive little attention, thus potentially increasing the probability of congressional action within the policy area.¹¹¹

Potential Disadvantages of Commissions

Congressional advisory commissions have been criticized by both political and scholarly observers. In addition to criticisms outlined above (where one person's perception of an advantage may be another person's perception of a disadvantage), these criticisms chiefly fall into three groups. First, critics often charge that commissions are an "abdication of responsibility" on the part of legislators.¹¹² Second, they argue that commissions are undemocratic, often replacing elected legislators with appointed decision-makers who may not have interests that represent public constituencies. Third, critics also argue that commissions are financially inefficient; they are expensive, and their findings often ignored by Congress.

Abdicated Responsibility

Some critics of commissions argue that commissions are primarily created by legislators specifically for "blame avoidance."¹¹³ In this view, Congress uses commissions to distance itself from risky decisions when confronted with controversial issues. By creating a commission, legislators may be able to take credit for addressing a topic of controversy without having to take a substantive position on the topic. If the commission's work is ultimately popular, legislators can take credit for the work. If the commission's work product is unpopular, legislators can shift responsibility to the commission itself.¹¹⁴

Reduced Democratic Accountability

Critics often charge that commissions are undemocratic. This criticism takes three forms. First, commissions may be unrepresentative of the general population; the members of most commissions are not elected and may not reflect all of the public's diverse interests on an issue.¹¹⁵ Even if commission members are elected officials, they may represent only a subset of the public and may pursue a correspondingly narrower set of goals than might occur through the regular legislative process. Second, commissions lack popular accountability. Unlike Members of Congress, commission members are often insulated from the pressures of elections and public

15, no. 3 (Summer 1955), pp. 197-199.

¹¹⁰ Charles J. Hanser, *Guide to Decision: The Royal Commission* (Totowa, NJ: Bedminster Press, 1965), pp. 222-225.

¹¹¹ George T. Sulzner, "The Policy Process and the uses of National Governmental Study Commissions," p. 444.

¹¹² Senator Trent Lott, "Special Commissions," remarks in the Senate, *Congressional Record*, daily edition, vol. 148 (Sept. 23, 2002), p. S9050. See also David Schoenbrod, *Power Without Responsibility: How Congress Abuses the People Through Delegation* (New Haven, CT: Yale University Press, 1993), p. 100; R.W. Apple, "Keeping Hot Potatoes Out of the Kitchen," *New York Times*, Feb. 2, 1989, p. D20.

¹¹³ R. Kent Weaver, "The Politics of Blame Avoidance," *Journal of Public Policy*, vol. 6, no. 4 (Oct.-Dec. 1986), pp. 373-374. See also Douglas Arnold, *The Logic of Congressional Action* (New Haven: Yale University Press, 1990), p. 101.

¹¹⁴ Campbell, *Discharging Congress*, pp. 68-69; Douglas Arnold, *The Logic of Congressional Action*, p. 101.

¹¹⁵ R. Kent Weaver, "Is Congress Abdicating Power to Commissions?" *Roll Call*, Feb. 12, 1989, pp. 5, 25.

opinion. Finally, commissions may not operate in public; unlike Congress, their meetings, hearings, and investigations may be held in private.¹¹⁶ A lack of openness or a perception of narrow representation may undermine the legitimacy of a commission's recommendations.

Financial Inefficiency/Cost

A third potential criticism of commissions is that they have high costs and low returns. Congressional commission costs vary widely, ranging from several hundred thousand dollars to over \$10 million. Coupled with this objection is the problem of congressional response to the work of a commission. In most cases, Congress is under no obligation to act, or even respond to the work of a commission. If legislators disagree with the results or recommendations of a commission's work, they may simply ignore it. In addition, there is no guarantee that any commission will produce a balanced product. Commission members may have their own agendas, biases, and pressures. Or they may simply produce a mediocre work product.¹¹⁷ Finally, some commentators argue that advisory boards may create economic and legislative inefficiency if they function as patronage devices, with Members of Congress using commission positions to pay off political debts.¹¹⁸

It is difficult to estimate the overall cost of any commission. Annual budgets for congressional advisory entities and executive branch federal advisory committees range from tens of thousands of dollars to millions of dollars annually.¹¹⁹ Overall expenses for any individual advisory entity are dependent on a variety of factors, the most important of which are the number of paid staff and the duration and scope of the commission. Many commissions have few or no full-time staff; others employ large numbers, such as the National Commission on Terrorist Attacks Upon the United States (hereafter 9/11 Commission), which had a full-time paid staff of nearly 80.¹²⁰ Secondary factors that may affect commission costs include the number of commissioners, how often the commission meets or holds hearings, whether the commission travels or holds field hearings, and the number and size of publications the commission produces.

Use of Expedited Procedures

Expedited or "fast-track" legislative procedures are special procedures that Congress adopts to promote timely committee and floor action on a specifically defined type of bill or resolution.¹²¹ The use of expedited legislative procedures may bring advantages and disadvantages. An observer's policy and procedural objectives may determine whether expedited procedures are

¹¹⁶ Natalie Hanlon, "Military Base Closures: A Study of Government by Commission," *Colorado Law Review*, vol. 62, no. 2 (1991), pp. 331-364.

¹¹⁷ James Q. Wilson, "A Reader's Guide to the Crime Commission's Report," *Public Interest*, no. 9 (Fall 1967), pp. 64, 82.

¹¹⁸ David S. Brown, "The Public Advisory Board as an Instrument of Government," p. 199.

¹¹⁹ For example, the 9/11 Commission received a total of \$15 million in three separate appropriations: an initial \$3 million reprogrammed from the National Foreign Intelligence Program and subsequent appropriations of \$11 million and \$1 million. See Intelligence Authorization Act for FY2003, P.L. 107-306, 116 Stat. 2383 (2002); Emergency Wartime Supplemental Appropriations Act, P.L. 108-11, 117 Stat. 591 (2003); and Extension of National Commission on Terrorist Attacks Upon the United States, P.L. 108-207, 118 Stat. 556 (2004).

¹²⁰ U.S. National Commission on Terrorist Attacks Upon the United States, "How Many People Serve on the Commission Staff?", at <http://govinfo.library.unt.edu/911/about/faq.htm#q4>.

¹²¹ For an overview of the topic, see CRS Report RS20234, *Expedited or "Fast-Track" Legislative Procedures*, by Christopher M. Davis.

advantageous or not. Perceived advantages and disadvantages, therefore, are often in the eye of the beholder.

Often-Cited Rationales for Expedited Procedures

Congress has very rarely provided for the recommendations of a commission to be considered under expedited legislative procedures (e.g., prohibitions on floor amendments). In the case of the BRAC commissions, these instances appear to have been pursued to facilitate action on potentially controversial matters where, nevertheless, there was widespread (1) agreement on the specific nature of needed changes (e.g., closing unneeded military bases); (2) confidence that expert, impartial, and nonpartisan expertise would drive the recommendations; and (3) concern that without expedited procedures, filibusters or vote-trading might undermine the achievement of widely shared congressional goals. Such processes and discrete “decision packages” also may help elected officials to communicate with constituents about difficult trade-offs in a tangible way.

Potential Impacts on Process and Power Relationships

Procedural changes also may result in changes to power relationships among Congress, the President, agencies, and other participants in high-stakes legislative, budget, and policy processes.¹²² Use of expedited procedures may affect relationships and opportunities for influence within Congress, as well. As noted in another CRS report, “there are a number of characteristics that typify the legislative process—more or less, and more often than not.”¹²³ In general, expedited procedures are, to greater or lesser degrees, inconsistent with five of these characteristics, including the following: (1) committees generally control their agendas, schedules, and workloads; (2) the House and Senate generally consider only measures that have been approved by their committees; (3) a voting majority of Representatives or Senators generally can determine whether a measure will be considered on the floor; (4) setting the floor agenda and the daily schedule generally is a prerogative of the majority party, acting through its leadership; and (5) the House and Senate generally can set conditions for floor debate and amendment that are appropriate for each measure that they consider. Special procedures contained in the fiscal commission bills may be inconsistent with several or all of these characteristics.

Some Similarities and Differences

All of the bills that are the focus of this report would require the commission or task force to submit proposed legislative language for congressional consideration. Each also would create special procedures to encourage expedited consideration of a commission’s proposed legislative language. By including expedited procedures, the commission proposals begin to resemble aspects of the BRAC process for Department of Defense installations, insofar as amendments and floor debate would, for the most part, be prohibited. S. 276 stands out from the other proposals, however, in allowing “relevant” amendments. S. 2853 and S. 276 would require three-fifths votes

¹²² For example, see discussion of some proposals to establish commissions in CRS Report RS21980, *Commission on the Accountability and Review of Federal Agencies (CARFA): A Brief Overview of Legislative Proposals*, by Clinton T. Brass; CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass; and CRS Report RL34551, *A Federal Sunset Commission: Review of Proposals and Actions*, by Virginia A. McMurtry.

¹²³ This paragraph draws from CRS Report 98-888, *“Fast-Track” or Expedited Procedures: Their Purposes, Elements, and Implications*, by Christopher M. Davis.

of Members of Congress, duly chosen and sworn, for final passage or to proceed to a vote on initial passage, respectively. The other two proposals, S. 1056 and H.R. 1557, by contrast, do not include requirements for supermajorities for initial or final chamber passage.

Commission Structure

The overall structures of each of the proposed commissions are similar in many respects, both to each other and to previous independent advisory entities established by Congress.¹²⁴ Specifically, the proposed commissions would all study a particular policy problem, serve in an advisory capacity, and report a work product detailing the findings, conclusions, and recommendations of the commission.

That said, each particular proposed commission has unique elements. This section discusses and compares three aspects of the proposed commissions' structures: (1) their membership and appointment structure, (2) the partisan balance of appointments, and (3) supermajority requirements.

A more detailed comparison of the provisions of each commission is in **Appendix A**.

Membership and Appointment Structure

Congressionally created commissions use a wide variety of appointment structures. The statutory scheme may designate members of the commission, such as a specific cabinet official or congressional leader. In other cases, selected leaders, often with balance between the parties, appoint commission members. A third common statutory scheme is to have selected leaders, such as committee chairs and ranking members, recommend candidates for appointment to a commission. These leaders may act either in parallel or jointly, and the recommendation may be made either to other congressional leaders, such as the Speaker of the House and President pro tempore of the Senate, or to the President.

The decisions made when devising a commission's appointment structure may be significant, particularly concerning Member participation as commissioners. Inclusion of legislators on such panels ensures that Congress will be able to exercise a certain degree of control over the operations or outcome of the entity concerned. At the same time, service by Members on commissions is arguably antithetical to two of the typical rationales for creating a commission in the first place: to reduce the workload of Congress by delegating certain functions to temporary bodies and to produce independent advice.

Even in the absence of direct membership on a commission, in drafting the particulars of an appointment scheme, legislators can dictate, to some degree, the measure of autonomy a commission enjoys. For example, although the legislation creating the 9/11 Commission did not stipulate that Members of Congress must be included in the commission's membership, it did call for nine of the 10 members of the commission to be selected by congressional leaders, so that Congress would remain influential in shaping the commission. Attention to the proper balance between the number of members appointed by congressional leaders and by other individuals, or to the number of Members of Congress required to be among the appointees, or to the qualifications of appointees, can be significant factors in enabling a commission to fulfill its congressional mandate.

¹²⁴ Two potential structurally-analogous entities are the Commission on Wartime Contracting in Iraq and Afghanistan, P.L. 110-181, § 841, 122 Stat. 230 (2008), and the 9/11 Commission, P.L. 107-306, 116 Stat. 2408 (2002).

A commission's appointment scheme may affect both the ability of the commission to fulfill its statutory duties and the final work product it produces. For instance, if the appointment scheme includes qualifying provisos so specific that only a small set of private citizens could serve on the panel, the final work product of the commission may represent a narrow range of viewpoints.

In general, each fiscal commission proposal provides for similar appointment structures. Each proposal involves "hybrid" appointments by both Members of Congress and the President instead of just one or the other branch making appointments. In each case, the majority of appointments would be made by Members of Congress, rather than executive branch representatives. However, the relative weight of congressional appointments varies from a bare majority of eight out of 15 (S. 276) to strong majorities of 14 out of 16 (H.R. 1557) and 16 out of 18 (S. 2853 and S. 1056).

Use of Members of Congress as Commission Members

Each proposal would provide for a portion of the commission's membership to be drawn from Members of Congress. This is somewhat unusual. Between the 101st (1989-1991) and the 110th Congress (2007-2009), 12 out of approximately 80 congressional advisory commissions have either explicitly required, or otherwise contained language that could allow, Members to serve as commissioners.¹²⁵ Using Members of Congress as commission members may complicate one of the potential advantages of the typical commission structure—the use of unelected experts one step removed from the political process.

On the other hand, if a commission has the ability to construct legislative packages that would be subject to expedited congressional consideration, appointment of non-Members to a commission might be viewed as a delegation of legislative power away from Congress. In addition, some proposals for commissions in previous Congresses arguably would have transferred some power to the President.¹²⁶ From either perspective, appointment of commissioners who are not Members of Congress might raise questions about Congress delegating power and authority to the President or unelected, nongovernmental interests.¹²⁷

¹²⁵ These commissions include the National Commission for the Review of the Research and Development Programs of the United States Intelligence Community; the Benjamin Franklin Tercentenary Commission; the National Commission for the Review of the National Reconnaissance Office; the James Madison Commemoration Commission; the Abraham Lincoln Bicentennial Commission; the Presidential Advisory Commission on Holocaust Assets in the United States; the Commission on the Roles and Capabilities of the United States Intelligence Community; the Commission on Protecting and Reducing Government Secrecy; the Commission on Leave; and the Commission on the Bicentennial of the United States Capitol.

¹²⁶ CRS Report RS21980, *Commission on the Accountability and Review of Federal Agencies (CARFA): A Brief Overview of Legislative Proposals*, by Clinton T. Brass.

¹²⁷ In the 109th Congress, S. 3521 would have established a Commission on Congressional Budgetary Accountability and Review of Federal Agencies, which appeared to be modeled on similar proposals for a Commission on the Accountability and Review of Federal Agencies. (See CRS Report RL33547, *S. 3521, the Stop Over Spending Act of 2006: A Brief Summary*, by Bill Heniff Jr.; and CRS Report RL32726, *Proposals for a Commission on the Accountability and Review of Federal Agencies (CARFA): Analysis and Issues for Congress*, by Clinton T. Brass.) Senator Kent Conrad proposed amending S. 3521 to strike the commission language and "[replace] it with the bipartisan membership of the Congressional committees of jurisdiction so that they can do their job," instead of "outsourcing responsibility for our nation's fiscal condition to largely unelected, unaccountable commission members." (See Senate Committee on the Budget, Democratic Staff, "'Do Your Job' Amendment Directs Congress To Do Its Job," June 20, 2006, at http://budget.senate.gov/democratic/press/2006/summary_2006doyourjobamendment062006.pdf.)

Partisan Balance

As described previously, each of the proposals employs a structure that provides for appointments by both the majority and minority parties in Congress, as well as by the executive branch. One of the proposals, S. 276, would provide for an even partisan balance of appointments, with an equal number of appointments from majority and minority congressional leaders, as well as a requirement that the seven presidential appointments be three Democrats, three Republicans, and one person who “shall not be affiliated with any political party.”¹²⁸ S. 2853 and S. 1056 would both provide for an even partisan balance of congressional appointments, but also include two partisan executive branch appointments (the Secretary of the Treasury and one discretionary presidential appointment in S. 2853; the Secretary of the Treasury and the Director of OMB in S. 1056).¹²⁹ H.R. 1557 would provide for a majority advantage in congressional appointments and two partisan executive branch appointments (the Director of OMB and the Secretary of the Treasury).¹³⁰ Both H.R. 1557 and S. 1056 would include two non-voting members, the Comptroller General and the Director of the Congressional Budget Office.¹³¹

Most past congressional commissions have been structured to be bipartisan, with either an even split of appointments between majority and minority or with a one- or two-member advantage for the majority. For example, the 9/11 Commission had an even partisan split of appointments.¹³² By achieving a nonpartisan or bipartisan character, congressional commissions may make their findings and recommendations more politically acceptable to diverse viewpoints. The bipartisan or nonpartisan arrangement can give recommendations strong credibility, both in Congress and among the public, even when dealing with divisive issues of public policy. Similarly, a commission bill that is perceived as partisan may have difficulty gathering the necessary support in Congress.

In some cases, however, seeking bipartisanship may reduce the potential legislative coalition for the bill, if supporters believe that the commission’s work would be compromised by creating a bipartisan commission. Bipartisanship also can arguably impede a commission’s ability to complete its mandate, because consensus among commission members may be more difficult to achieve. In situations where a commission is tasked with studying sensitive issues that are often viewed through a partisan lens—such as oversight of executive branch activities—the appointment of an equal number of majority and minority commissioners may serve to promote partisanship within the commission rather than suppress it.

Supermajority Procedures

Each proposed commission would be tasked with issuing a final report detailing its findings, conclusions, and recommendations.¹³³ As a permanent entity, S. 276 would also require reports every five years after its initial report.¹³⁴ In addition, each of the proposals requires that the commission achieve supermajority support in order to approve recommendations. S. 1056 would

¹²⁸ S. 276, § 4(a)(1).

¹²⁹ S. 2853, § 316(b)(4)(B); S. 1056, § 7(a)(2).

¹³⁰ H.R. 1557 § 7(a)(1).

¹³¹ H.R. 1557 § 7(a)(2); S. 1056, § 7(a)(3).

¹³² P.L. 107-306 (2002); 116 Stat. 2383, at 2408.

¹³³ S. 1056, § 3(a); H.R. 1557 § 3(a); S. 276, § 3(c)(2)(A)(i); S. 2853, § 316(b)(3)(B).

¹³⁴ S. 276, § 3(c)(2)(A)(i).

require that 13 of 18 members vote in favor of submitting legislative proposals to Congress.¹³⁵ H.R. 1557 would require a three-fourths vote.¹³⁶ S. 276 would require 10 of 15 commissioners to approve its reports.¹³⁷ S. 2853 would require 14 of 18 commissioners to approve a report.¹³⁸

The use of supermajority voting requirements may have a significant effect on the final work product produced by the commission. Commissions with significant supermajority thresholds for approval of final reports may produce work products with fewer specific, concrete findings and more general statements that are unlikely to produce wide dissent. Such requirements also may enhance the ability of minority coalitions of commission members (which would not necessarily be of the same political party) to extract concessions in negotiations.¹³⁹ However, while supermajority voting requirements typically require considerable consensus-building in order to advance recommendations,¹⁴⁰ a lack of supermajority procedures does not preclude the achievement of a bipartisan or non-partisan work product from the commission. It is not uncommon for a congressional commission to deliver a work product that is unanimously agreed to by all members. For example, the final reports of both the 9/11 Commission and Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism were unanimously agreed to by all members.

¹³⁵ S. 1056, § 6(a).

¹³⁶ H.R. 1557, § 6(a).

¹³⁷ S. 276, § 3(c)(2)(B).

¹³⁸ S. 2853, § 316(b)(3)(B)(ii).

¹³⁹ The possibility of such a situation also might be significant in the context of a commission's scope. Most of the proposals that are the focus of this report include within the commission's scope all policies that may relate to the fiscal balance of the federal government. As such, it is not clear what policy domains, if any, might fall outside a commission's scope, when drafting legislation for commission approval. On one hand, proposals that have an "everything is on the table" approach to a commission's scope may be important for fully covering all aspects of the federal government's fiscal policy. In addition, an "everything is on the table" approach may be viewed by some observers as more fair and policy-neutral, because no preconditions have been set about the scope of decision making. On the other hand, inclusion of policy areas within a commission's scope that are widely perceived as not driving the federal government's fiscal imbalance, in combination with a requirement for supermajority voting, may enable a minority coalition to use bargaining power to extract concessions that are only somewhat related to the overall fiscal balance.

¹⁴⁰ See <http://govinfo.library.unt.edu/911/report/index.htm>, and <http://www.preventwmd.gov/report/>.

Appendix A. Side-by-Side Comparison of Proposals

Table A-1. Side-by-Side Comparison of Selected Provisions
(111th Congress)

Provision	S. 2853 ^a	S. 1056	H.R. 1557	S. 276
Proposed Entity Name	Bipartisan Task Force for Responsible Fiscal Action [sec. 316(b)(1)].	Securing America’s Future Economy Commission [sec. 2].	(Same as S. 1056.) Securing America’s Future Economy Commission [sec. 2].	National Commission on Entitlement Solvency [sec. 3(a)].
Duties or Purpose	Review the fiscal imbalances of the federal government, identify factors that affect the long term fiscal imbalance of the federal government; analyze potential courses of action; and provide recommendations and legislative language [sec. 316(b)(2)]. Address the nation’s long-term fiscal imbalance and submit a report to Congress, the President, and the Vice President [sec. 316(b)(3)].	Examine the long-term challenges facing the United States and develop legislation designed to address four issues: (1) the unsustainable imbalance between long-term federal spending commitments and projected revenue; (2) increasing net national savings to provide for domestic investment and economic growth; (3) implications of foreign ownership of debt instruments issued by the United States Government; and (4) Improving the budget process to place greater emphasis on long-term fiscal issues [sec. 3(a)]. Legislation developed may include certain policy solutions [sec. 3(b)].	Same as S. 1056, except one of the allowed “policy solutions” also includes “limit[ing] the growth of entitlement spending”, which is not present in S. 1056 [sec. 3(b)].	Examine the Social Security and Medicare programs as follows: (1) review relevant analyses of the programs’ current and long-term actuarial financial condition; (2) identify problems that may threaten the long-term solvency of the programs; (3) analyze potential solutions to the problems that threaten the long-term solvency of the programs; and (4) provide recommendations and proposed legislative language that will ensure the long-term solvency of the programs [sec. 3(b)].

Provision	S. 2853 ^a	S. 1056	H.R. 1557	S. 276
Composition	<p>18 members.</p> <p>Two appointed by the President, one whom shall be the Secretary of the Treasury, and the other shall be an officer of the executive branch;</p> <p>Four appointed by the Senate majority leader from among Members of the Senate;</p> <p>Four appointed by the Senate minority leader from among Members of the Senate;</p> <p>Four appointed by the Speaker of the House from among Members of the House of Representatives; and</p> <p>Four appointed by the House minority leader from among Members of the House of Representatives [sec. 316(b)(4)(B)].</p>	<p>18 voting and two non-voting members. Voting members are:</p> <p>Director of the Office of Management and Budget (OMB);</p> <p>Secretary of the Treasury;</p> <p>Three appointed by the Speaker of the House;</p> <p>Three appointed by the minority leader of the House;</p> <p>Three appointed by the majority leader of the Senate;</p> <p>Three appointed by the minority leader of the Senate;</p> <p>The chair of the Committee on Finance or his designee from the committee;</p> <p>The ranking member of the Committee on Finance or his designee from the committee;</p> <p>The chair of the Committee on Ways and Means or his designee from the committee; and</p> <p>The chair of the Committee on Ways and Means or his designee from the committee [sec. 7(a)(2)]. ^b</p> <p>Two non-voting members: the Comptroller General of the United States and the Director of the Congressional Budget Office [Sec. 7(a)(3)]</p>	<p>16 voting and two non-voting members. Voting members are:</p> <p>Director of the Office of Management and Budget (OMB);</p> <p>Secretary of the Treasury;</p> <p>Four appointed by the Speaker of the House;</p> <p>Three appointed by the minority leader of the House;</p> <p>Four appointed by the majority leader of the Senate; and</p> <p>Three appointed by the minority leader of the Senate [sec. 7(a)(1)].</p> <p>Two non-voting members: the Comptroller General of the United States and the Director of the Congressional Budget Office [sec. 7(a)(2)].</p>	<p>15 members.</p> <p>Seven appointed by the President of whom three shall be Democrats, appointed in consultation with the Senate majority leader and the Speaker of the House; three of whom shall be Republicans; and one of whom shall not be affiliated with any political party;</p> <p>Two appointed by the Senate majority leader, one of whom is from the Committee on Finance;</p> <p>Two appointed by the Senate minority leader, one of whom is from the Committee on Finance;</p> <p>Two appointed by the Speaker of the House, one of whom is from the Committee on Ways and Means; and</p> <p>Two appointed by the House minority leader, one of whom is from the Committee on Ways and Means [sec. 4(a)(1)].</p> <p>Members shall be exceptionally qualified based on their education, experience, and attainments, exceptionally qualified to perform the duties required [sec. 4(a)(2)].</p>
Chair Selection	<p>Two co-chairs. One jointly designated by the President, Senate majority leader, and Speaker of the House and one jointly designated by the House minority leader and the Senate minority leader [sec. 316(b)(4)(C)].</p>	<p>Two co-chairs designated by the President. One must be a Republican and one must be a Democrat [sec. 7(a)(4)].</p>	<p>(Same as S. 1056.)</p> <p>Two co-chairs designated by the President. One must be a Republican and one must be a Democrat [sec. 7(a)(3)].</p>	<p>Two co-chairs chosen by the commission. The co-chairs cannot be affiliated with the same political party [sec. 4(d)].</p>

Provision	S. 2853 ^a	S. 1056	H.R. 1557	S. 276
Appointments of Members of Congress	All appointments made by House and Senate leadership are to be Members of Congress [sec. 316(b)(4)(B)(ii)-(v)].	Each appointing authority who is a Member of Congress (for example, the Speaker of the House) must appoint two Members of Congress to the commission, but cannot appoint more than two [sec. 7(b)(1)]. An individual appointed to the commission who is a member of Congress ceases to be a member of the commission if he or she ceases to be a Member of Congress [sec. 7(b)(2)].	Each appointing authorities who is a Member of Congress (for example, the Speaker of the House) must appoint one Member of Congress to the commission, but cannot appoint more than one [sec. 7(b)(1)]. An individual appointed to the commission who is a member of congress ceases to be a member of the commission if he or she ceases to be a Member of Congress [sec. 7(b)(2)].	An individual appointed to the commission who is a member of Congress, ceases to be a member of the commission if he or she ceases to be a Member of Congress [sec. 4(c)].
Appointment deadlines and vacancies	Appointments are to be made not later than 14 days after enactment [sec. 316(b)(4)(D)]. Vacancies shall be filled not later than 14 days after the date of the vacancy in the same manner as the original appointment [sec. 316(b)(4)(E)].	Appointments are to be made no later than 30 days after enactment [sec. 7(c)] and are for the life of the commission [sec. 7(d)(1)]. Vacancies must be filled within 30 days in the same manner as the original appointment [sec. 7(d)(2)].	(Same as S. 1056) Appointments are to be made no later than 30 days after enactment [sec. 7(c)] and are for the life of the commission [sec. 7(d)(1)]. Vacancies must be filled within 30 days in the same manner as the original appointment [sec. 7(d)(2)].	Appointments are to be made not later than January 1, 2010 [sec. 4(a)(3)]. Initially appointed members serve a six-year term, with later appointments serving a five-year term [sec. 4(a)(4)]. Vacancies must be filled within 30 days, and an individual appointed to fill a vacancy serves only for the remaining portion of the previous appointee's term [sec 4(b)].
Quorum	Fourteen members [sec. 316(b)(5)(B)].	Six voting members [sec. 7(g)].	(Same as S. 1056.) Six voting members [sec. 7(g)].	10 members [sec. 5(a)(3)].

Provision	S. 2853 ^a	S. 1056	H.R. 1557	S. 276
Compensation	Each member serves without compensation but can receive travel expenses, including per diem in lieu of subsistence [sec. 316(b)(4)(F)].	Members of Congress receive no compensation or allowances [sec. 7(e)(1)]. Other members receive travel expenses, including per diem in lieu of subsistence [sec. 7(e)(2)].	(Same as S. 1056.) Members of Congress receive no compensation or allowances [sec. 7(e)(1)]. Other members receive travel expenses, including per diem in lieu of subsistence [sec. 7(e)(2)].	Each member, other than the co-chairs, is paid at a daily rate equivalent to level IV of the Executive Schedule for each day engaged in commission duties (including travel time). The co-chairs are paid at a daily rate equivalent to level III of the Executive Schedule for each day engaged in commission duties (including travel time) [sec. 5(b)(1)]. Members receive travel expenses [sec. 5(b)(2)].
Staffing and resources	Co-chairs may appoint and fix compensation of a staff director and other personnel as may be necessary at rates not to exceed level III of the Executive Schedule [sec. 316(c)(1)]. Each member may appoint up to two additional dedicated staff at a rate not exceeding level III of the Executive Schedule [sec. 316(c)(2)]. Task force staff are considered federal employees [sec. 316(c)(3)]. Federal government employees may be detailed to the commission, with or without reimbursement, upon the approval of the chairs [sec. 316(c)(5)]. Applies Senate ethics rules to the task force [sec. 316(c)(8)(C)].	May appoint a director [sec. 8(a)] and the director may hire staff [sec. 8(b)]. The pay for the director shall not exceed \$150,000 and the pay for additional personnel may not exceed the basic pay for level V of the Executive Schedule. All employees may be appointed and paid without regard to Title 5, <i>United States Code</i> , and the General Schedule. [sec. 8(c)]. Federal government employees may be detailed to the commission without reimbursement [sec. 8(d)].	(Same as S. 1056.) May appoint a director [sec. 8(a)] and the director may hire staff [sec. 8(b)]. The pay for the director shall not exceed \$150,000 and the pay for additional personnel may not exceed the basic pay for level V of the Executive Schedule. All employees may be appointed and paid without regard to Title 5, <i>United States Code</i> , and the General Schedule. [sec. 8(c)]. Federal government employees may be detailed to the commission without reimbursement [sec. 8(d)].	Staff is headed by an executive director paid at a rate equivalent to a rate under the Senior Executive Service [sec. 5(d)(1)]. With the approval of the co-chairs, the executive director may appoint personnel as appropriate [sec. 5(d)(2)].

Provision	S. 2853 ^a	S. 1056	H.R. 1557	S. 276
Meeting and hearings	<p>Initial meeting shall be not more than 45 days after enactment [sec. 316(b)(5)(D)(i)].</p> <p>Meeting may be called by the co-chairs or by the vote of at least 10 members [sec. 316(b)(5)(D)(ii)].</p>	<p>May hold hearings, take testimony, receive evidence, and administer oaths or affirmations [sec. 9(a)].</p> <p>Must conduct at least one town hall style public hearing in each federal Reserve district [sec. 4].</p> <p>Meetings may be called by the chair or a majority of voting members [sec. 7(f)].</p>	<p>(Same as S. 1056.)</p> <p>May hold hearings, take testimony, receive evidence, and administer oaths or affirmations [sec. 9(a)].</p> <p>Must conduct at least one town hall style public hearing in each federal Reserve district [sec. 4].</p> <p>Meetings may be called by the chair or a majority of voting members [sec. 7(f)].</p>	<p>Must conduct at least one town hall style public hearing in each Federal Reserve district. The commission may hold other hearings it determines appropriate to its work [sec. 5(a)(2)].</p>

Provision	S. 2853 ^a	S. 1056	H.R. 1557	S. 276
Powers	<p>May procure, upon written request of the co-chairs, technical assistance from a federal agency [sec. 316(5)(F)].</p> <p>Shall have access to information, resources, and copies from the Library of Congress, the Chief Actuary of Social Security, the Chief Actuary of the Centers for Medicare and Medicaid Services, the Treasury Department, the Health and Human Services Department, the Congressional Budget Office, the Office of Management and Budget, the Government Accountability Office, and the Joint Committee on Taxation [sec. 316(b)(5)(G)].</p> <p>May use the United States mail under the same conditions as other federal agencies [sec. 316(b)(5)(H)].</p> <p>Co-chairs may request administrative assistance from the General Services Administration [sec. 316(b)(5)(I)(i)] and other departments and agencies [sec. 316(b)(5)(I)(ii)].</p> <p>May enter into contracts [sec. 316(b)(5)(J)].</p> <p>May hire consultants at a daily rate not to exceed level III of the Executive Schedule [sec. 316(c)(6)].</p> <p>Co-chairs may procure temporary and intermittent services at a daily rate not to exceed level III of the Executive Schedule [sec. 316(c)(7)].</p> <p>May accept and utilize voluntary services [sec. 316(c)(8)].</p>	<p>May authorize any member or agent of the commission to take any action the commission is authorized to take under the legislation [sec. 9(b)].</p> <p>May use the United States mail under the same conditions as other federal agencies [sec. 9(c)].</p> <p>Upon the request of the commission the Administrator of General Services shall provide, on a reimbursable basis, administrative support services to the commission [sec. 9(d)].</p> <p>May enter into contracts [sec. 9(e)].</p> <p>May accept, use, and dispose of gifts or donations of service or property [sec. 9(f)].</p> <p>The director may procure the services of experts and consultants at rates not to exceed the daily equivalent of the basic pay for level V of the Executive Schedule [sec. 8(e)].</p>	<p>(Same as S. 1056.)</p> <p>May authorize any member or agent of the commission to take any action the commission is authorized to take under the legislation [sec. 9(b)].</p> <p>May use the United States mail under the same conditions as other federal agencies [sec. 9(c)].</p> <p>Upon the request of the commission the Administrator of General Services shall provide, on a reimbursable basis, administrative support services to the commission [sec. 9(d)].</p> <p>May enter into contracts [sec. 9(e)].</p> <p>May accept, use, and dispose of gifts or donations of service or property [sec. 9(f)].</p> <p>The director may procure the services of experts and consultants at rates not to exceed the daily equivalent of the basic pay for level V of the Executive Schedule [sec. 8(e)].</p>	<p>With the approval of the co-chairs, the executive director may procure temporary services [sec. 5(d)(3)].</p> <p>At the request of the co-chairs, any federal agency may detail, without reimbursement, agency personnel to the commission [sec. 5(d)(4)].</p> <p>Shall have reasonable access to materials, resources, data, and other information from the Library of Congress, the Chief Actuary of Social Security, the Secretary of Health and Human Services, the Centers for Medicare and Medicaid Services, the Congressional Budget Office, and other executive and legislative agencies. If necessary, the co-chairs will make requests in writing [sec. 4(d)(5)].</p>

Provision	S. 2853 ^a	S. 1056	H.R. 1557	S. 276
Report requirements	<p>Report may not be voted on before November 3, 2010 and after November 9, 2010 [sec. 316(b)(3)(B)(i) and sec. 316(b)(5)(C)(ii)(I)].</p> <p>Report must include:</p> <p>(1) a detailed statement of findings, conclusions, and recommendations;</p> <p>(2) the assumptions, scenarios, and alternatives considered;</p> <p>(3) proposed legislative language [sec. 316(b)(3)(i)(I)-(III)].</p> <p>Report must be approved by 14 of 18 members [sec. 316(b)(3)(ii)].</p> <p>Report may contain minority or additional views [sec. 316(b)(3)(iii)].</p> <p>Report must be transmitted no later than November 15, 2010 to the President, Vice President, Speaker of the House, and the majority and minority leaders of both Houses [sec. 316(b)(3)(iv)].</p> <p>Report, and full record of the vote, must be made available to the public [sec. 316(b)(3)(v)].</p>	<p>Must report not later than one year after enactment to Congress and the President. The report must include:</p> <p>(1) a description of the commissions' activities;</p> <p>(2) a summary of comments and suggestions generated at the town hall meetings;</p> <p>(3) a detailed statement of commission findings on public preferences on issues, policies, and tradeoffs presented in the town hall meetings;</p> <p>(4) a detailed description of long-term fiscal problems faced by the United States;</p> <p>(5) a list of policy options for addressing those problems; and</p> <p>(6) criteria for the legislative proposal to be developed [sec. 5].</p> <p>[sec. 5(a)]; and</p> <p>must rely on estimates and assumptions provided by the Congressional Budget Office (CBO) [sec. 5(b)].</p> <p>Based on the vote of five members, may develop two alternative methods for estimating the costs of legislation as a supplement to the CBO estimates and assumptions [sec. 5(c)].</p>	<p>Same as S. 1056 for sec. 5(a), but does not require reliance on CBO estimates and assumptions. Also, Based on the vote of five members, may develop two alternative methods for estimating the costs of legislation as an alternative (rather than supplement, as in S. 1056) to the CBO estimates and assumptions [sec. 5(c)].</p>	<p>Must report, not later than one year after date of enactment and every five years thereafter, to the President, Congress, the Commissioner of Social Security, and the Administrator of the Centers for Medicare and Medicaid Services. The report must include a detailed statement of findings, conclusions, recommendations, and the proposed legislative language (in the form of a proposed bill) [sec. 3(c)(2)(A)(i)].</p> <p>All findings, conclusions, and recommendations in the report must have the vote (for inclusion) of at least 10 members [sec. 3(c)(2)(B)].</p>

Provision	S. 2853 ^a	S. 1056	H.R. 1557	S. 276
Legislative language requirements	Legislative language to be included in commission report [sec. 316(b)(3)(B)(i)(III) and sec. 316(b)(5)(C)(ii)].	Not later than 60 days after the report is submitted, by a vote of at least 13 members, shall submit a legislative proposal to Congress and the President to address the issues [sec. 6(a)]. The legislative proposal, to the extent feasible, should address generational equity and long-term economic stability, comments and suggestions from the public, and the criteria set forth in the commission report [sec. 6(b)] and include a long-term CBO cost estimate [sec. 6(c)].	Not later than 60 days after the date the report is submitted, by a vote of at least three-fourths of the members, shall submit a legislative proposal to Congress and the President [sec. 6(a)]. The legislative proposal, to the extent feasible, should address generational equity and long-term economic stability, comments and suggestions from the public, and the criteria set forth in the commission report [sec. 6(b)] and include a long-term CBO cost estimate [sec. 6(c)].	Proposed legislative language is part of the report requirement [sec. 3(c)(2)(A)(ii)]. Proposed legislative language is to be included in the report only if the commission has considered the impact on Medicaid. No proposed legislative language is be included that reflects recommended changes to the Medicaid program [sec. 3(2)(B)].
Duration	Terminates 90 days after submission of report [sec. 316(d)].	Terminates at the earlier of: 60 days after its legislative proposal is submitted; or the day on which the Comptroller General publishes in the <i>Federal Register</i> a notice that legislation has been enacted to reduce the fiscal gap by one percent of gross domestic product over the 20-year period after enactment or two percent over the 50-year period after enactment [sec. 10].	(Same as S. 1056.) Terminates at the earlier of: 60 days after its legislative proposal is submitted; or the day on which the Comptroller General publishes in the <i>Federal Register</i> a notice that legislation has been enacted to reduce the fiscal gap by one percent of gross domestic product over the 20-year period after enactment or two percent over the 50-year period after enactment [sec. 10].	No termination mentioned.

Provision	S. 2853 ^a	S. 1056	H.R. 1557	S. 276
Requirements for House and Senate consideration of commission-approved legislative language	<p>Special procedures provided to encourage expedited consideration of bill consisting of commission's legislative proposal. Special procedures (applicable to both chambers, unless otherwise indicated) would include, among others:</p> <ul style="list-style-type: none"> • amendments to the bill are not allowed; • consideration is limited to 100 hours; and • final passage requires the affirmative vote of 3/5 of Members, duly chosen and sworn. [sec. 316(e)]. 	<p>Special procedures provided to encourage expedited consideration of bill consisting of commission's legislative proposal. Special procedures (applicable to both chambers, unless otherwise indicated) would include, among others:</p> <ul style="list-style-type: none"> • amendments to the bill are not allowed; • debate is limited to 10 hours in the House and 50 hours in the Senate; and • no special requirement on final passage vote, i.e., simple majority required. [sec. 11]. 	<p>Special procedures provided to encourage expedited consideration of bill consisting of commission's legislative proposal. Special procedures (applicable to both chambers, unless otherwise indicated) would include, among others:</p> <ul style="list-style-type: none"> • only certain amendments to the bill are allowed (complete alternatives proposed by the President, the Budget Committee, and the ranking minority member of Budget Committee, as long as each does not increase the deficit in relation to the commission bill); • debate is limited to 10 hours in the House and 50 hours in the Senate on initial consideration of bill, and 5 hours in the House on a conference report on the bill (debate is not limited on the conference report in the Senate); and • no special requirement on initial passage vote, i.e., simple majority required. [sec. 13]. 	<p>Special procedures provided to encourage expedited consideration of bill consisting of commission's legislative proposal. Special procedures (applicable to both chambers, unless otherwise indicated) would include, among others:</p> <ul style="list-style-type: none"> • committee amendments must meet certain requirements, and all amendments must be "relevant" to the bill; • consideration is limited to 40 hours, and debate on any amendments and debatable motions and appeals is limited to five hours each; and • requires affirmative vote of 3/5 of Members, duly chosen and sworn, to proceed to a vote on initial passage. [sec. 7].
Authorization for appropriations	<p>Authorized to be transferred \$9 million from funds appropriated or made available remaining unobligated under Division A of the American Recovery and Reinvestment Act of 2009 (other than under Title X of Division A of the law; P.L. 111-5) [sec. 3]. ^c</p>	<p>No specific mention of funding.</p>	<p>No specific mention of funding.</p>	<p>Such sums as necessary to carry out the provisions of the bill are authorized to be appropriated [sec. 6].</p>

Provision	S. 2853 ^a	S. 1056	H.R. 1557	S. 276
Other provisions	<p>Co-chairs, in consultation with other members, may establish rules and regulations for conduct of business [sec. 316(b)(5)(A)].</p> <p>Proxy voting is prohibited [sec. 316(b)(5)(C)(i)].</p> <p>May establish an advisory panel consisting of volunteers with knowledge and expertise relevant to commission work and appointed by the co-chairs [sec. 316(c)(9)].</p>	<p>Requires CBO to provide estimates when the commission, President, or chairman or ranking member of the Committee on the Budget of either House, makes a written request to the Director of CBO for a long-term cost estimate. CBO must publish the estimate in the <i>Congressional Record</i> as expeditiously as possible. The cost estimate must include the cost for each provision or group of provisions for the first fiscal year in effect and for the next 49 fiscal years, and include a statement on any estimated future costs not included in the cost estimate. The cost estimate may be presented in terms of percentage of gross domestic product if presentation in dollars is not practicable [sec. 12].</p>	<p>The President may, within 90 calendar days of the commission submitting its legislative proposal, submit to Congress an alternative legislative proposal [sec. 11].</p> <p>The Budget Committee of either House may, within 90 calendar days of the commission submitting its legislative proposal and in consultation with the relevant committees, publish an alternative legislative proposal in the <i>Congressional Record</i> [sec. 12(a)].</p> <p>The ranking member of the Budget Committee of either House may, within 90 calendar days of the commission submitting its legislative proposal and in consultation with the relevant committees, publish an alternative legislative proposal in the <i>Congressional Record</i> [sec. 12(b)].</p> <p>Requires CBO to prepare and publish in the <i>Congressional Record</i> a cost estimate at the request of the commission, the President, or the chair or ranking member of the Committee on the Budget of either House [sec. 14].</p>	<p>Exempt from the Federal Advisory Committee Act. [sec. 5(c)].</p> <p>Provides definitions of terms used [sec. 2].</p>

Source: CRS analysis of legislation as introduced.

Notes:

- a. References correspond to sections of Title III of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 631 et seq.).
- b. The bill language provides twice [in Section 7(a)(2)(I) and 7(a)(2)(J)], for a member of the commission to be the Chair of the Committee on Ways and Means or a committee Member designated by the Chair. Presumably, this is a drafting error, with the original intent being that one member of the commission be the chair of the Committee on Ways and Means and one member be the ranking member of the Committee on Ways and Means.
- c. P.L. 111-5, 123 Stat. 115, February 17, 2009.

Appendix B. Long-Term Fiscal Situation and Major Entitlements

This appendix discusses the long-term fiscal situation of the federal government and three major entitlement programs: Social Security, Medicare, and Medicaid. Although the three programs relate to only some of the federal government's current revenue and spending policies, CBO and many observers focus on projections for these entitlement programs, and particularly Medicare and Medicaid, when assessing the federal government's long-term fiscal situation.

Issues related to these topics may inform assessments whether the use of a commission, coupled with expedited consideration of a commissions' proposals, may be appropriate for addressing the federal government's long-term fiscal situation; and, if a commission proposal were considered, how a commission proposal might be structured.

Long-Term Fiscal Situation and Major Entitlements

Long-Term Outlook

In its August 2009 budget report, CBO identified fiscal challenges related to future health care costs as a major issue affecting the country's long-term budget outlook.¹⁴¹ Overall, rising health care costs per beneficiary and the nation's aging population seem likely to keep combined Medicare, Medicaid, and Social Security costs rising faster than per capita GDP.¹⁴² For Medicare and Medicaid, "excess cost growth"—the extent to which the increase in health care spending for an average individual exceeds the growth in per capita gross domestic product (GDP)—is the main factor contributing to large projected increases in the two health care programs. Medicare and Social Security provide benefits to individuals who are mostly elderly.¹⁴³ Medicaid provides benefits to individuals who are mostly non-elderly low-income people, but the elderly and disabled account for two-thirds of the program's spending.¹⁴⁴

In a June 2009 report, CBO wrote that "under any plausible scenario," increasing health care costs and the aging of the U.S. population will cause federal spending to rise rapidly under current law.¹⁴⁵ More specifically, "almost all of the projected growth in federal spending other than interest payments on the debt comes from growth in spending on the three largest entitlement programs—Medicare, Medicaid, and Social Security."¹⁴⁶ According to CBO estimates, Medicare and Medicaid will account for 80% of this growth between now and 2035, and 90% between now and 2080. In 2003, CBO's then director Donald Marron testified that "[l]ittle disagreement exists about the cause of [the fiscal] situation.... It stems primarily from federal policies aimed at improving the well-being of retirees, the disabled, and the chronically

¹⁴¹ CBO, *The Budget and Economic Outlook: An Update*, August 2009, at <http://www.cbo.gov/doc.cfm?index=10521>.

¹⁴² CBO, *The Long-Term Budget Outlook*, June 2009, pp. 12-13, at <http://www.cbo.gov/doc.cfm?index=10297>.

¹⁴³ CBO, *The Long-Term Outlook for Health Care Spending*, November 2007, p. 14, at <http://www.cbo.gov/doc.cfm?index=8758>.

¹⁴⁴ CBO, *The Long-Term Budget Outlook*, June 2009, p. 24, at <http://www.cbo.gov/doc.cfm?index=10297>.

¹⁴⁵ CBO, *The Long-Term Budget Outlook*, June 2009, p. 1, at <http://www.cbo.gov/doc.cfm?index=10297>. For additional perspectives on spending trends, see CRS Report RL33074, *Mandatory Spending Since 1962*, by D. Andrew Austin and Mindy R. Levit; and CRS Report RL34424, *Trends in Discretionary Spending*, by D. Andrew Austin and Mindy R. Levit.

¹⁴⁶ *Ibid.*

ill.”¹⁴⁷ CBO concluded that the current mix of federal fiscal policies is unsustainable in the long term and that “[s]lowing the growth rate of outlays for Medicare and Medicaid is the central long-term challenge for federal fiscal policy.”¹⁴⁸ Nevertheless, CBO separately observed an additional, complicating factor in addressing the long-term fiscal situation. “At this point,” according to CBO, “experts do not know exactly how to structure such reforms so as to reduce federal spending on health care significantly in the long run without harming people’s health,” and furthermore, “many of the specific changes that might ultimately prove most important cannot be foreseen today and could be developed only over time through experimentation and learning.”¹⁴⁹

For purposes of illustrating the issue of sustainability, keeping future federal outlays at 20% of GDP, approximately its current share, and leaving revenue policies unchanged, according to CBO current-law projections, could require either drastic reductions for all spending other than that for Social Security, Medicare, and Medicaid, or reining in the projected cost growth of these three programs. In 2006, the then-acting director of CBO stated that, “by 2030 ... spending for those programs [Social Security, Medicare, and Medicaid] is projected to reach roughly 15 percent of GDP... If that increase happened ... the rest of the budget would have to be cut by more than half” to keep overall spending close to its current level.”¹⁵⁰

These programs present differing challenges to the long-term fiscal position of the federal government. Estimates of the long-term fiscal gap between Social Security (Old-Age, Survivors and Disability Insurance) outlays and Social Security revenues as a proportion of long-term GDP are generally much smaller than estimates of the long-term fiscal gap between Medicare (Part A, Part B, and Part D) outlays and revenues as a portion of long-term GDP. These long-term estimates of fiscal imbalances are sensitive to changes in assumptions regarding productivity growth and interest rates. Spending projections for Medicare and Medicaid are sensitive to medical inflation. Past projections that medical inflation would slow have proved to be overly optimistic.

Long-term fiscal challenges facing the federal government are complicated by the current state of the U.S. economy. As the economy recovers strength, some may call for stabilizing the government’s annual deficit as a percentage of GDP. This would require some combination of lower spending and higher revenues than currently projected and faster economic growth. On the other hand, labor and real estate markets may remain weak for the medium term, and some state and local governments are likely to face severe budgetary challenges in coming years.¹⁵¹ Some, therefore, may call for additional economic stimulus or a delay before the imposition of more austere fiscal policies.

Views differ about the timing when action is necessary to address the long-term fiscal situation. Significantly postponing spending and revenue adjustments may nevertheless have serious economic consequences.¹⁵² Debt is not free and requires interest payments that strain budgets.

¹⁴⁷ CBO, “The Economic Costs of Long-Term Federal Obligations,” statement of CBO Director Douglas Holtz-Eakin before the House Budget Committee, July 24, 2003, p. 2, at <http://www.cbo.gov/doc.cfm?index=4439>.

¹⁴⁸ CBO, *The Long-Term Budget Outlook*, June 2009, p. XI.

¹⁴⁹ CBO, “Health Care Reform and the Federal Budget,” June 16, 2009, at <http://cboblog.cbo.gov/?p=294>.

¹⁵⁰ CBO, *The ABCs of Long-Term Budget Challenges: Director’s Conference on Budget and Accounting for Long-Term Obligations*, opening remarks by Donald B. Marron, Acting Director, December 8, 2006, p. 2, at <http://www.cbo.gov/ftpdocs/77xx/doc7703/12-08-OpeningRemarks.pdf>. More recent CBO projections are broadly consistent with that outlook.

¹⁵¹ Pew Center on the States, *Beyond California: States in Fiscal Peril*, November 2009, at http://www.pewcenteronthestates.org/report_detail.aspx?id=56044.

¹⁵² Recent trends in the credit default swap market imply an increased market perception of the likelihood of default on

High debt levels also could limit the government's flexibility in meeting its obligations or in responding to emerging needs of its citizens.

Major Entitlement Programs

Concerns about entitlement programs, including long-term trends for revenues and spending related to entitlement programs, are not new. Numerous efforts have been pursued to study and address such concerns. Some were pursued through commissions established by Congress or the President,¹⁵³ where the commissions were used to tap expertise and facilitate bargaining that involved significant trade-offs and high political risks. Some commissions have focused on entitlements or health care, generally.¹⁵⁴ However, other efforts to study and address policy concerns about entitlements have been pursued by Congress through the regular legislative process, without the involvement of a special commission. For example, in the 111th Congress, considerable effort has been undertaken to address health care and health insurance reform through the legislative process without the central involvement of a commission.¹⁵⁵

Several of the fiscal commission proposals that are the subject of this report expressly highlight major entitlement programs. Three programs in particular are the federal government's largest: Social Security, Medicare, and Medicaid. The sections below describe the programs and how commissions have been involved in some past efforts to address entitlement financing, among other issues, generally without the use of expedited legislative procedures.¹⁵⁶

Social Security

Social Security is one of the largest federal programs, with 159 million covered workers (and their employers) paying into the system and 52 million beneficiaries receiving monthly cash benefits. The program, which began in the 1930s as a social insurance program aimed at improving the economic circumstances of the elderly following the Depression, has been modified by Congress many times over its history. Today, Social Security provides workers and their families protections against the loss of income due to retirement, disability, and death.

certain Treasury securities. In past years, Treasury securities were typically regarded as risk-free. See Alan J. Auerbach and William G. Gale, "The Economic Crisis and the Fiscal Crisis: 2009 and Beyond: An Update," Tax Policy Center working paper, September 2009, at http://www.brookings.edu/~media/Files/rc/papers/2009/06_fiscal_crisis_gale/06_fiscal_crisis_gale_update.pdf.

¹⁵³ For discussion of some entitlement-focused commissions, see CRS Report 97-180 EPW, *Medicare: Proposals to Establish a Medicare Reform Commission*, by Darin Wipperman and Jennifer O'Sullivan; and CRS Report 94-806 EPW, *The Bipartisan Commission on Entitlement and Tax Reform*, by David Koitz (both archived and available to congressional clients upon request).

¹⁵⁴ The Bipartisan Commission on Entitlement and Tax Reform was established by President Clinton in 1993 by E.O. 12878 (as amended by E.O. 12887). The commission's chairmen proposed a package of options to address the future growth of entitlements, including measures related to Social Security and Medicare. The commission, although divided over specific proposals, voted 24 to 6 on several "broad principles" to decrease entitlement spending. CRS Report 97-180 EPW, *Medicare: Proposals to Establish a Medicare Reform Commission*, by Darin Wipperman and Jennifer O'Sullivan; and CRS Report 94-806 EPW, *The Bipartisan Commission on Entitlement and Tax Reform*, by David Koitz (both archived and available to congressional clients upon request).

¹⁵⁵ The effort arguably was influenced by previous experience in the early 1990s when the William J. Clinton Administration developed health care reform proposals separately from the legislative process using an executive branch task force.

¹⁵⁶ A 2006 search by CRS identified at least 34 commissions that focused on major entitlement and social programs, including entitlements generally, Social Security, Medicare, Medicaid, health insurance, food stamps, welfare, federal employee pensions, unemployment compensation, and veterans' benefits.

Social Security's trust funds, the combined federal Old-Age, Survivors and Disability Insurance (OASDI) trust funds, currently take in more revenue than they pay in benefits. The trust funds' income comes primarily through a 6.2% payroll tax that is levied separately on employers and employees (for a total payroll tax of 12.4%), with additional income from interest on the trust funds' investments and income taxes paid by some beneficiaries on their benefits. The excess monies are invested in non-marketable obligations of the U.S. government that are held in the trust funds. Starting in 2016, Social Security's annual expenditures on benefits are projected to exceed tax revenue.¹⁵⁷ At that time, Social Security will start to redeem its public debt obligations in order to pay full benefits until the trust fund assets are exhausted, which is projected to occur in 2037. After the trust funds are exhausted, current payroll tax rates are projected to be sufficient to pay 76% of scheduled benefits in 2038, declining to 74% of scheduled benefits by 2083. For the 75-year projection period, the actuarial deficit is projected to be equivalent to about 2 percentage points of Social Security's taxable payroll; in other words, an increase in the payroll tax of roughly 2%, from 12.4% to 14.4%, would close the system's financial shortfall. Social Security's shortfall represents about 0.72% of GDP, on average, over the period from 2009 to 2083.

A number of bipartisan commissions have addressed Social Security's financial and benefit structure, including two commissions within the last 28 years. The National Commission on Social Security Reform was established in 1981 through President Ronald Reagan's Executive Order (E.O.) 12335, in response to projections that the system would run short of funds by mid-1983. A majority of members of the commission, also known as the "Greenspan Commission," agreed on a consensus package of proposals to meet the short-range deficit and about two-thirds of long-range financial requirements. In accordance with the executive order, the commission transmitted its recommendations to the President, the Secretary of Health and Human Services, and both houses of Congress on January 20, 1983.¹⁵⁸ Congress held hearings on the commission's report during early 1983 and incorporated most of the commission's recommendations into P.L. 98-21, "The Social Security Amendments of 1983," which was signed by President Reagan in April 1983.

A provision of the Social Security Act required that an Advisory Council on Social Security meet every four years beginning in 1969. The last Advisory Council was appointed in late 1994 and released their final report in 1997,¹⁵⁹ which included three different options to address system financing and the adequacy and equity of benefits. The Social Security Administrative Reform Act of 1994 (P.L. 103-296), which created the Social Security Administration as an independent agency, also replaced the Advisory Councils with the Social Security Advisory Board.

The President's Commission to Strengthen Social Security was established in 2001 by President George W. Bush through E.O. 13210. The President directed the commission to meet several principles, including a mandate to include voluntary personal retirement accounts and prohibitions against increasing the payroll tax or changing the benefits of retirees and near-retirees. Chaired by Senator Daniel Patrick Moynihan and Richard Parsons, the commission submitted its findings and recommendations to the President in a final report issued on December

¹⁵⁷ 2009 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, at <http://www.ssa.gov/OACT/TR/2009/>. Where this report refers to the Trustees' projections, the Trustees' intermediate assumptions are used.

¹⁵⁸ *Report of the National Commission on Social Security Reform*, January 1983, at <http://www.socialsecurity.gov/history/reports/gspan.html>.

¹⁵⁹ Report of the 1994-1996 Advisory Council on Social Security, Findings and Recommendations, vol. 1, at <http://www.ssa.gov/history/report/adccouncil/report/toc.htm>.

21, 2001.¹⁶⁰ The report put forward three model reform plans, each of which included voluntary personal retirement accounts. The three models differed in how they addressed financing shortfalls and benefit structure.

Health Care Programs: Medicare and Medicaid

Health care costs have increased significantly as a proportion of the U.S. economy over the past decades, from 7.2% of GDP in 1970 to likely more than 17% in 2009.¹⁶¹ Within the federal government, the costs of federal health insurance programs, and especially the two largest programs Medicare and Medicaid, have grown as well. According to CBO, between FY1975 and FY2008, federal spending for Medicare rose from 0.8% of GDP to 2.7%, in part because of increased enrollment, which climbed from 25 million in 1975 to 45 million in 2008.¹⁶² Over the same period, total spending for Medicaid, including spending by the states, increased from 0.8% of GDP to 2.5%.

Medicare provides federal health insurance for 45 million people who are elderly or disabled (the elderly make up about 85% of enrollees) or who have end-stage renal disease or amyotrophic lateral sclerosis (also known as Lou Gehrig's disease). People become eligible for Medicare on the basis of age when they reach 65; disabled individuals become eligible for Medicare 24 months after they become eligible for benefits under Social Security's Disability Insurance program.¹⁶³ Medicare consists of four distinct parts: Part A (Hospital Insurance [HI]); Part B (Supplementary Medical Insurance [SMI]); Part C (Medicare Advantage [MA]); and Part D (prescription drug benefit).

The Part A program, which covers inpatient services provided by hospitals as well as skilled nursing and hospice care, is financed primarily through payroll taxes levied on current workers and their employers, which are credited to the HI trust fund.¹⁶⁴ The HI trust fund has faced a projected shortfall almost from its inception. When observers refer to the pending insolvency of Medicare, they actually are referring to the pending insolvency of the HI trust fund.¹⁶⁵ The HI and SMI trust funds are overseen by a board of trustees that makes annual reports to Congress. The 2009 report projects that under intermediate assumptions, the HI trust fund will become insolvent in 2017, two years earlier than projected in 2008.¹⁶⁶

The National Bipartisan Commission on the Future of Medicare was established in 1997 and was required to review the long-term financial condition of Medicare, identify problems that threaten the financial integrity of the program's trust funds, and analyze potential solutions.¹⁶⁷ Former Senator John Breaux and Former Representative Bill Thomas jointly chaired the Commission.¹⁶⁸ On March 16, 1999, the commission held its final meeting to consider and vote on a Medicare reform proposal by the commission's co-chairs. On a motion to report to Congress and the

¹⁶⁰ Strengthening Social Security and Creating Personal Wealth for All Americans, Report of the President's Commission, December 2001, http://govinfo.library.unt.edu/csss/reports/Final_report.pdf.

¹⁶¹ CRS Report R40517, *Health Care Reform: An Introduction*, coordinated by Bernadette Fernandez.

¹⁶² CBO, *The Long-Term Budget Outlook*, June 2009, p. 25, at <http://www.cbo.gov/doc.cfm?index=10297>.

¹⁶³ CBO, *The Long-Term Budget Outlook*, June 2009, p. 22.

¹⁶⁴ CRS Report RS20173, *Medicare: Financing the Part A Hospital Insurance Program*, by Patricia A. Davis.

¹⁶⁵ CRS Report RS20946, *Medicare: History of Part A Trust Fund Insolvency Projections*, by Patricia A. Davis.

¹⁶⁶ CRS Report RS20173, *Medicare: Financing the Part A Hospital Insurance Program*, by Patricia A. Davis.

¹⁶⁷ The commission was established by P.L. 105-33, Sec. 4021, and is presently inactive.

¹⁶⁸ For more information, see "Facts about the National Bipartisan Commission on the Future of Medicare," no date, at <http://thomas.loc.gov/medicare/about.html>.

President, the commission voted with 10 ayes and 7 nays. Eleven votes were required to make formal recommendations to the Congress and the President. Other proposals for Medicare-related commissions recently have been proposed, including for elevation of the Medicare Payment Advisory Commission (MedPAC) into an executive agency with the authority to set Medicare provider payment rates and make other policy decisions (e.g., S. 1380).¹⁶⁹

Medicaid is a joint, federal-state means-tested entitlement program that finances the delivery of primary and acute care medical services and long-term care for certain low-income populations including children, pregnant women, individuals with serious disabilities and/or multiple chronic conditions, other special needs populations, and the elderly.¹⁷⁰ Medicaid is the largest or second-largest item in most state budgets and is second only to Medicare in terms of federal spending on health care. The federal government's share of Medicaid's spending for benefits varies among the states but averages about 57%.¹⁷¹

The Medicaid and CHIP programs act as a health safety net for the low-income population.¹⁷² However, the programs face many challenges. Even prior to the recent economic downturn, the Medicaid program's financing represented a growing share of federal and state budgets. High unemployment levels and financial challenges facing many state governments are likely to exacerbate the issue. A poor economy affects how much money states can dedicate to the programs while at the same time has the potential to vastly increase the number of individuals eligible for coverage. Yet, the programs are targeted at populations that have special health needs, or are at higher risk of being uninsured. The policy debate will likely focus on how to balance Medicaid's and CHIP's rising health costs, both in the short-term with the current economic state and in the long-term, against the health insurance needs of vulnerable populations.

In May 2005, the Secretary of the Department of Health and Human Services, Michael O. Leavitt, established a Medicaid Commission under P.L. 92-463 and the Federal Advisory Committee Act, to advise the Secretary on "ways to modernize the Medicaid program so that it can provide high-quality health care to its beneficiaries in a financially sustainable way."¹⁷³ The

¹⁶⁹ The Obama Administration submitted a similar proposal to Congress titled the Independent Medicare Advisory Council Act (IMAC) in July 2009. Advocates of these types of proposals argue that creating a new, independent entity or governance structure in Medicare is necessary to achieve real health care reform and reductions in overall spending, and that congressional policy making does not consistently produce good decisions. Critics express concern about reducing Congress's role in the Medicare policy making and oversight process and allowing commission recommendations to automatically become law, which in their view would give too much power to an entity composed of unelected officials and reduce accountability to Congress and the public. This paragraph draws on CRS Report R40915, *An Overview of Proposals to Establish an Independent Commission or Entity in Medicare*, by Holly Stockdale.

¹⁷⁰ CRS Report RL33202, *Medicaid: A Primer*, by Elicia J. Herz. For more information about Medicaid, see <http://crs.gov/Pages/subissue.aspx?cliid=594&parentid=13>.

¹⁷¹ CBO, *The Long-Term Budget Outlook*, June 2009, p. 24, at <http://www.cbo.gov/doc.cfm?index=10297>. The recently reauthorized Children's Health Insurance Program (CHIP) allows states to cover targeted low-income children with no health insurance in families with income that is above Medicaid eligibility levels, but is not an entitlement program. Like Medicaid, CHIP is a federal-state matching program. Unlike Medicaid, CHIP is not an entitlement program; instead federal funds are authorized and allotted to the states which in turn determine eligibility rules and covered benefits within broad federal guidelines. Under CHIP, some adults (e.g., parents) may also be covered, typically via special waivers.

¹⁷² For analysis of Medicaid and CHIP in the context of health reform, see CRS Report R40900, *Medicaid and Children's Health Insurance Program (CHIP) Provisions in Affordable Health Care for America Act (H.R. 3962)*, coordinated by Elicia J. Herz.

¹⁷³ For more information about the commission and its activities, see U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, "Medicaid Commission," at <http://aspe.hhs.gov/medicaid/>.

commission transmitted its reports on September 1, 2005, and December 29, 2006. In the latter report, the commission recorded support of the report's recommendations by a vote of 11 ayes, one nay, and two abstentions, with two commissioners not present.¹⁷⁴

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Acknowledgments

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¹⁷⁴ Medicaid Commission, *Final Report and Recommendations*, December 29, 2006, p. 25.

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